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(2017) 06 GUJ CK 0005

In the Gujarat High Court

Case No : 1136 of 2013

HARESHBHAI JAYANTILAL THAKKAR & ORS. — APPELLANT

Vs

STATE OF GUJARAT & ANR. — RESPONDENT

Date of Decision : 05-06-2017

Acts Referred:

Code of Criminal Procedure, 1973, Section 482 - Saving of inherent powers of High Court
Indian Penal Code, 1860, Section 120B, Section 420, Section 468, Section 471, Section 114, Section 467, Section 465, Section 463, Section 464, Section 470 - Punishment of criminal conspiracy - Cheating and dishonestly inducing delivery of property - Forgery for purpose of cheating - Using as genuine a forged document - Abettor present when offence is committed - Forgery of valuable security, will, etc - Punishment for forgery - Forgery - Making a false document - Forged document
Notaries Act, 1952, Section 13 - Cognizance of offence

Citation : (2017) 06 GUJ CK 0005

Hon'ble Judges : N.V.Anjaria

Bench : Single Bench

Advocate : HRIDAY BUCH, ?VIJAY H NANGESH, ?RONAK RAVAL

Judgement

1. By filling the present application under section 482 of the Code of Criminal Procedure, 1973, the applicants prayed for quashment of the First Information Report (FIR) bearing Crime Register No.I-187 of 2012 registered on 10.10.2012 with Deesa City police station, District Banaskantha. The said FIR was in respect of the offecnes

under sections 463, 464, 465, 467, 468, 470, 471, 420, 120B and 114 of Indian Penal Code, 1860.

2. The first informant-respondent No.2 herein stated in his complaint inter alia that the accused No.1-applicant No.1 herein had instituted Special Civil Suit No. 18 of 2017 before the civil court at Deesa, against the complainant as well as one Patel Kalabhai Dharmabhai and others. It was alleged that in the said suit proceedings, alongwith others, the plaintiff had produced two agreements to sell in respect of agricultural land, out of which agreement dated 14.07.2015 showed the first informant to be the vendor. It was alleged that no such agreement to sell dated 14.07.2005 was executed by the first informant, nor by said Kalabhai Dharmbhai Patel and that neither of them had signed any such document. It was claimed that no amount of consideration was received. In the First Information Report, in all 11 accused were named. It was further inter alia alleged that accused No.4 who was a Notary Public, notarised the document in absence of the applicants and that the other applicant accused who were advocate by profession, gave wrong identification.

3. It appears from the contents of the allegations in the FIR and the facts pleaded in the application that one Kanbi Kalabhai Rajabhai and other persons were the owners of certain agricultural land situated at Moti Mahudi, Taluka Dantiwada, District Banaskantha. Their lands were acquired by the government for the Sipu Irrigation Project. The owners-the land losers were to be compensated by the state government. It appears that

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the original owners-the land losers executed six different agreements to sell in favour of the the first informant-the respondent No.2 and his partner Patel Kalabhai Dharmabhai. The agreement to sell was executed on 28.12.2004 as well as on 16.05.2005 for total consideration of Rs. 8,22,000/- The respondent No.2 and his partner failed to fulfill terms of the agreements and could not arrange the funds towards consideration within time. It is the case of the applicants that they approached the applicant No.1 and thereupon agreed to execute agreement to sell in favour of the applicant No.1 in respect of the very parcels of lands. Out of the total land admeasuring 30 acres and 22 gunthas, the lands admeasuring 20 acres and 12 gunthas were agreed to be sold to applicant NO.1. The state government allotted 31 acres and 18 gunthas of land in favour of the original owners-land losers. It is the case of the applicants that the land-losers fulfilled their part of performance by giving Power of Attorney to respondent No.2-his partner Kalabhai Dharmabhai Patel empowering them to sell, transfer or alienate the agricultural lands allotted to the land losers. Respondent No.2 and his partner did not fulfill their responsibility with regard to the agreement to sell subsequently executed in favour of applicant No.1.

3.1 A Special Civil Suit No. 18 of 2017 for Specific Performance of the agreement in favour of the present applicant No.1 was initiated by the applicant herein against the first informant and his partner. An application Exh. 5 was also filed seeking temporary

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injunction. In the suit proceedings, original owners, who were parties, did not choose to appear. Exh. 5 application came to be allowed on 4.7.2009. Appeal From Order preferred against the order below Exh.5 came to be withdrawn on 7.8.2009 and in the suit proceedings, the issues came to be framed on 30.06.2010. It was stated in course of the hearing that the said suit is pending at the stage of leading evidence.

4. Heard learned advocate Mr. Hriday Buch for the applicants and learned Additional Public Prosecutor Mr. Raval for the respondent state, as also learned senior counsel Mr. Percy Kavina with learned advocate Mr. Vijay Nagesh for original complainant-the respondent No.2 herein.

4.1 Learned advocate for the applicants submitted that prior to lodging of the FIR in question, the applicants had instituted the civil suit for specific performance and it was after delay of 5 years that the criminal complaint was filed alleging that the agreements to sell which was subject matter of civil proceedings were forged. He relied on the decision of the Apex Court in Kishan Singh (D)through L.R.s vs. Gurpal Singh [(2010) 8 SCC 775]. He further submitted that issues were framed in the civil suit,but there was no issue regarding forgery. It was submitted that essentially it was a civil dispute between the parties and out of motives mala fide and intended to wreck vengeance, criminal machinery was invoked. Learned advocate for the applicants further relied on the decision in Bharat S. Cholera vs. State of Gujarat being Criminal Misc. Application No. 14379 of 2011 decided on 18th April, 2013, as well as another decision in the case of

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Vinodbhandra Trambaklal Acharya vs. State of Gujarat Criminal Misc. Application NO. 13067 of 2015 decided as per order dated 13.01.2016 to submit that section 13 of the Notaries Act prohibits the courts from taking cognizance of offence committed by a Notary in exercise of or in purported exercise of the functions under the Act.

4.2 On the other hand, learned Assistant Government Pleader seriously opposed the prayer for quashment submitting that mere aspect that civil suit was pending, would not justify the court to readily exercise the inherent powers which are to be exercised sparingly and with circumspection. Joining with the submissions of learned AGP and furthering the case, learned senior counsel submitted that the allegations in the FIR were clear so as to make out the offences alleged. He submitted that there were believable evidence in support of the allegations, that chargesheet was filed and therefore, the court may not quash the F.I.R.. He submitted that the powers under section 482 of the Criminal Procedure Code are not to be exercised in routine manner, but in rare cases where on the bare reading of the allegations in the FIR, it could be concluded that the offences were not made out. He further submitted that delay will be irrelevant for arriving at a conclusion whether FIR is required to be quashed or not. Delay by itself is not fatal, according to learned senior counsel, who submitted that in the given set of circumstances, passage of time becomes usual and natural, which may not be a factor to doubt the

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veracity of the complainant. He relied on the decision in State of Maharashtra vs. Narain Singh Yadav [(2009) 16 SCC 392], to buttress his submission that in that case, the decision of the High Court in quashing criminal proceedings solely on the ground of lapse of time was not approved by the Apex Court.

5. Now, the conspectus of the controversy reveal the following facts and aspects relating to the civil proceedings between the parties.

(i) The applicant No.1 instituted Special Civil Suit for specific performance of the agreements to sell in which the respondent No.2-the original complainant and his partner Patel Kalabhai Dharmabhai are defendant Nos. 2 and 1 respectively. The said suit was filed on 31.02.2007 and is pending. The very documents which are subject matter of civil suit, are subject matter of alleged offences under the FIR in question.

(ii) In the said suit, application Exh. 5 for temporary injunction was filed, which was allowed partly. Respondent No.2, purchaser of the land and his partner were directed to maintain status quo with regard to the ownership and possession of the land.

(iii) Aggrieved by the order below Exh. 5, the first informant and his partner Patel Kalabhai Dharmabhai and others approached this court by filling an Appeal from Order. It is the case of the applicants that the Appeal from Order was withdrawn, as the court was not inclined to entertain the same.

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In any case, the Appeal from Order has been withdrawn and the injunction as was granted by the trial court is in operation in respect of the subject matter land.

(iv) Defendant Nos. 24 and 25 came to be subsequently added, who have filed their written statement below Exh. 149 raising contentions that they are bona fide purchaser. They also raised contention about the limitation. Additional issues are framed by the court on the basis of these pleadings.

(v) In the said civil suit, the court framed issues below Exh.97 on 30.06.2010. It is relevant to notice an un-controverted aspect that in the issues framed, no issue is raised by any of the defendants including the first informant-respondent No.2 about the forgery of agreements to sell, nor the court has framed any such issue regarding forgery of the documents as sought to be now alleged in the F.I.R. filed. Even in additional issues, such issue on forgery has not been framed.

(vi) In the written statement filed by the respondent No.2-the first informant, he has not chosen to allege fraud or forgery of the signatures on the agreements to sell in question. What is pleaded in the written statement at Exh. 81 is that the agreements to sell are got up, however, specific case of fraud or forgery has not been put forth or pleaded.

5.1 The other attendant conspicuous aspect include

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that the applicant No.1 had written cheque in connection with the Sale agreement for an amount of Rs. 1,00,000/- on 3.2.2006 drawn on Deesa Nagrik Sahkari Bank. The said cheque which was in favour of the partner of respondent No.2- Patel Kalabhai Dharmabhai, was presented for withdrawl of the amount by said Patel Kalabhai Dharmabhai himself and he has countersigned the cheque. Furthermore, it could also be noticed that agreement to sell in question was sent for obtaining opinion of a hand-writing expert alongwith the documents containing the signatures of the first informant and his partner Patel Kalabhai Dharmabhai. The handwriting expert of the Forensic Science Laboratory gave his opinion specifically to state that on comparison of the natural signatures as well a the disputed signatures, both match each other and that there was no significant difference between two sets of signatures.

5.2 Not only that the pleadings in defence raised in respect of the case in the civil suit of the applicant does not include the plea that the documents of agreement to sell were forged or that forgery was committed, the report of the hand-writing expert at least prima facie reflected in its paragraph-14 that there was no difference between the real and disputed signatures. The fact of depositing of amount of Rs. 1,00,000/-, was established by showing encashment of the cheque by the said Patel Kalabhai Dharmabhai-partner of the first informant. The issues were framed on 30.06.2010. Untill that stage, there was no case or conception with the respondent NO.2 original complainant that the documents

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were forged. The instant FIR in question was filed on 10.10.2012 in which the case of forgery and the related offecnes under IPC were put-forth and sought to be made out.

5.3 All the persons who have either signed as witnesses to the agreements or have prepared the agreements as advocates or notarised the same, are sought to be roped into in the allegations of commission of offence. Out of the persons named in the FIR, the applicant Nos. 2 and 3 are the drafters, the applicant Nos. 4 and 6 are the signatories, whereas the applicant Nos. 7 and 8 are the Notaries.

5.4 Another aspect that emerged in respect of the FIR in question was that the same was filed on 10.10.2012 in respect of the offences alleged to have been committed in July, 2005. The complaint was filed which was tainted by gross-delay, when the criminal proceedings are initiated 7 years after the execution of the agreements to sell and five years after filling of the civil suit. This superadded by the fact aforementioned that the civil suit was filed in which, the complainant failed to get any protective order. Delay in lodging the FIR strikes at the root of the credibility of the allegations, for the reason that a genuine complainant would not while away the time beyond a reasonable limit.

5.5 In Kishan Singh (supra), the Supreme Court stated on the aspect thus,

"In cases where there is a delay in lodging a FIR, the Court has to look for a plausible explanation for such delay. In absence of such an explanation, the delay may be fatal. The reason for quashing such proceedings may not be merely that the allegations were an afterthought or had given a coloured version

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of events. In such cases the court should carefully examine the facts before it for the reason that a frustrated litigant who failed to succeed before the Civil Court may initiate criminal proceedings just to harass the other side with mala fide intentions or the ulterior motive of wreaking vengeance on the other party. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the criminal court. The court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse of the process of law in the facts and circumstances of the case. (Vide : Chandrapal Singh & Ors. v. Maharaj Singh & Anr ., AIR 1982 SC 1238; State of Haryana & Ors. v. Ch. Bhajan Lal & Ors ., AIR 1992 SC 604; G. Sagar Suri & Anr. v. State of U.P.& Ors ., AIR 2000 SC 754; and Gorige Pentaiah v. State of A.P. &

6. It is well settled and reiterated in catena of decisions including in Inder Mohan Goswami and another vs.

State of Urraranchal [(2007) 12 SCC Page 1] that powers

under section 482, Cr.P.C ., which are inherent in nature,

are required to be exercised ex debito justitiae to do

the real and substantial justice. It was observed that

these are the powers to be exercised for prevention of

abuse of process of court and to otherwise secure the

ends of justice. A proceeding instituted by mala fide

would also justifiably attract exercise of the inherent

powers.

7. The principle is well settled that criminal

proceedings are not to be misused for settling the scores

or pressurising the parties to settle the civil disputes.

In Y.V. Jose v State of Gujarat [(2009) 3 SCC 78], was a

case where a dispute between the appellants and

respondent No.2 was regarding supply of a machine. The

Apex Court observed considering the facts of the case

that matter essentially involved dispute of civil nature

and may not be allowed to be resorted to as a short-cut.

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Civil litigation converted into criminal allegations to squeeze and to pressurize tantamount to abuse of process of law and therefore when the proceedings of the complainant reveal in its substance and essence dispute of civil nature, criminal proceedings in that regard does not survive to be continued. Continuing of the criminal proceedings is a serious thing and cannot be allowed be continued for the sake of continuance. This principle is applied where controversy unfolded is basically in the realm of civil rights and the criminal complaint is used as a tool to pressurize.

8. In Rajeeb Ranjan vs. R. Vijaykumar [(2015) 1 SCC 513], the facts were that the tender of the respondent complainant was rejected due to non-furnishing of the necessary documents. The respondent made various complaints before the authorities, but his case did not find favour. Whereafter, he instituted civil suit challenging the rejection of his tender, which was ultimately dismissed for non-prosecution, and the Special Leave to Petition was also dismissed by the Apex Court. After exhaustion of the aforesaid remedies, the respondent filed the complaint. The Magistrate took cognizance and summoned the appellants. The petition filed for quashing of the complaint came to be dismissed by the High Court while accepting the case of the appellant Rajeeb Ranjan. The Supreme Court allowed the Special Leave to Petition and held that the allegations of fabricating of records were mischievously made, which was an after thought and the same was intended just to give colour of criminality in a civil case. Since the

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complaint was filed after losing the battle in the civil proceedings, it was observed that filing of complaint was not bona fide and amounted to misuse and abuse of process of law. It was held that the High Court should have quashed such criminal proceedings in exercise of inherent powers under sections 482 of the Code of Criminal Procedure, 1973.

8.1 Observations in paragraph No. 19 in Rajeeb Ranjan (Supra), reads thus,

"If one looks into the allegations made in the complaint as stand alone allegations, probably what the High Court has said may seem to be justified. However, a little deeper scrutiny into the circumstances under which the complaint came to be filed would demonstrate that allegation of fabricating the false record is clearly an afterthought and it becomes more than apparent that the respondent has chosen to level such a make belief allegation with sole motive to give a shape of criminality to the entire dispute, which was otherwise civil in nature. As noted above, the respondent had in fact initiated civil action in the form of suit for injunction against the award of the contract in which he failed. Order of civil court was challenged by filing writ petition in the High Court. Plea of the respondent was that the action of the Department in rejecting his tender and awarding the contract to accused No.1 was illegal and motivated. Writ petition was also dismissed with cost. These orders attained finality. It is only thereafter criminal complaint is filed with the allegation that accused No.1 is favoured by creating a false certificate dated 28.12.2004. We would dilate this discussion with some elaboration, hereinafter."

9. The Supreme Court in Paramjeet Batra v State of Uttrakhand [(2013) 11 SCC 673] observed,

"While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court." (Para 12)

9.1 It was then stated,

"A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is

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available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court." (Para 12)

10. In the instant case, from the afore-discussed cumulative facts, circumstances and the aspects, necessary inference is that the criminal complaint is field in respect of the civil matter already pending and subject matter of civil suit, to pressurise the applicants. The criminal action was adverted to after having lost at material stages in the suit with a view to pressurise. The dispute which was pre-dominantly and practically was of civil nature, is sought to be translated into criminal offence and the complaint is registered with the police by alleging that the documents of agreements to sell were forged, after gap of six-seven years and that too without showing any real basis for establishing commission of affences. Thus, it is clear from the kind and nature of the allegation in the First Information Report as well as from attendant facts and circumstances, that the dispute has clinching civil attributes. Whatever aspect of the matter raised for alleging offences under Indian Penal Code, are intended to give colour of criminality to essentially a civil dispute. Such abusive initiation of criminal proceedings have to be quashed irrespective of the stage they may have reached. Filing of charge-sheet is no bar more particularly when overwhelming aspects of the case require exercise of powers under section 482 of the Cr. P.C..

11. In view of the above, criminal proceedings

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against the applicants pursuant to First Information Report in question cannot be continued. The First Information Report bearing Crime Register No.I-187 of 2012 registered on 10.10.2012 before the Deesa City police station, District Banaskantha and all consequential proceedings, qua the present applicants, are quashed.

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