

(2021) 09 GUJ CK 0031
In the Gujarat High Court

Case No : R/Criminal Revision Application No. 346 Of 201

Jagdish Mathuradas Mehta

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 13-09-2021

Acts Referred:

Indian Penal Code, 1860 — Section 397, 401, 406, 420
Code Of Criminal Procedure, 1973 — Section 173, 173(8)

Citation : (2021) 09 GUJ CK 0031

Hon'ble Judges : Ashutosh J. Shastri, J

Bench : Division Bench

Advocate : BJ Trivedi, JT Trivedi, Jignasa B Trivedi, JK Shah

Final Decision : Partly Allowed

Judgement

Ashutosh J. Shastri, J

1. The present Criminal Revision Application is filed by the original complainant under Section 397 read with Section 401 of the Code of Criminal Procedure challenging the legality and validity of the order dated 13.02.2019 passed by the learned 2nd Additional Senior Civil Judge, & Judicial Magistrate First Class, Mahuva, District : Bhavnagar below Exhibit-151 in Criminal Case No. 641 of 1996.

2. The case in brief is that the applicant - original complainant had filed a complaint with Deputy Superintendent of Police Mahuva, District : Bhavnagar on 04.02.1994 for the offences punishable under Sections 406, 420 of Indian Penal Code, against respondent no. 2 herein. In view of the Police report being filed that no offences were committed by respondent no. 2, the question was then decided by the learned Judicial Magistrate, First Class, Mahuva, District : Bhavnagar, who on 02.07.1996 was pleased to issue process against respondent no. 2 for the offences punishable under Section 420 of the Indian Penal Code and the charge came to be framed on 14.07.2008. The said framing of charge was challenged by respondent no. 2 by preferring Criminal Revision Application No.

26 of 2008 before the learned Sessions Court, Bhavnagar (Camp at Mahuva), which was dismissed on 09.02.2009. Thereafter, a petition for quashing also came to be submitted before this Court which also came to be rejected on 05.09.2014 being Criminal Misc. Application No. 9296 of 2009. The applicant learnt that respondent no. 2 had stated that the work of construction of the plot no. 38 which was allotted to the applicant in Muninagar Co-operative Housing Society Ltd., was complete, though substantial construction was left out. Respondent no. 2 also demanded extra payment though he had assured that no extra charge would be demanded from any member. Though the applicant had made full payment, but on account of respondent no. 2, a criminal complaint came to be filed, which was registered as Criminal Case No. 641 of 1996 which is presently pending in the court of learned 2nd Additional Civil Judge and Judicial Magistrate First Class, Muhava, District : Bhavnagar. In the said criminal case, documents were produced and during examination of the investigating officer as such, an application was moved by the present applicant - original complainant, at Exhibit-151 that those referred documents be exhibited. The said application came to be rejected and in addition to it, an amount of Rs.10,000/- was towards costs was imposed upon the applicant and it is this order which is made the subject matter of the present Criminal Revision Application under Section 397 read with Section 401 of the Code of Criminal Procedure.

3. In the present Criminal Revision Application on 03.04.2019, notice for final disposal came to be issued, but thereafter, on account of circumstances, from time to time, the matter got adjourned and ultimately, heard at length on 23.08.2021 and was put up for orders on 31.08.2021. Learned advocate Mr. Brijesh J. Trivedi appearing on behalf of the applicant has submitted that the order passed by the court below is nothing but reflecting a clear error in exercise in jurisdiction. While passing the impugned order, the learned Judge has unnecessarily weighed with the pendency of the proceedings of 1996 and has on the contrary, imposed costs upon the applicant and for giving such kind of application. This exercise of discretion is clearly irregular in nature and, therefore, this is a fit case in which revisional jurisdiction be exercised. Learned advocate Mr. Trivedi has submitted that it appears from the bare reading of the order that the learned Judge has mixed up two applications i.e. the present one at Exhibit-151 and Exhibit-119, which was filed under Section 173(8) of the Code of Criminal Procedure. Simply because Exhibit-119 application was rejected on 06.11.2017. it would not preclude the applicant from filing any other substantive application. The learned Judge has not considered this filing of application in the right spirit. In between an application at Exhibit-120 which is a list of documents in support of the application at Exhibit-119 is also taken into consideration as if the same would preclude the applicant from filing the present application below Exhibit-151. It has been submitted that Exhibit-119 which might have attained finality, but the relief contained therein is slightly different from the present one and the learned Judge has not properly construed the said application in its proper perspective. This application is filed for exhibiting the documents which

are referred to by the investigating officer in deposition and by mere exhibiting of documents, the contents therein are not which are obviously assumed to be finalized and, therefore, by mere exhibition of documents, no prejudice is likely to be caused to either side, and the learned Judge ought not to have passed the impugned order simply on the ground that the documents are merely a photocopy of the original documents. The reasons assigned by the court below are not just and proper to sustain the ultimate conclusion arrived at in the impugned order. It has been further contended by learned advocate Mr. Trivedi that simply because the application might have been given at little delayed stage of five months, the same would not be a ground to discard the request made by the applicant, which is ultimately in the interest of justice. In view of this pandemic Covid-19 period, if some time is taken to present the application, the same may not be a ground for passing the impugned order and further no doubt, this criminal case is of the year 1996, but to dispose of the same by all means, or under pressure the work would on the contrary defeat the very object in delivering the justice and therefore, apparently the reasons which are assigned by the court below are not in consonance with the law propounded by catena of decisions and as such, the Court may kindly consider the request of the applicant.

3.1. Learned advocate Mr. Trivedi has submitted that application below Exhibit-119 is for the purpose of further investigation permitted under Section 173(8) of the Code of Criminal Procedure and as such, simply because the same is not considered the documents which have been relied upon during the examination can't be refused to be exhibited since the same have been referred to. Be that as it may, the order passed by the court below is not just and proper, reflects clear non application of mind and as such, deserves to be quashed.

4. As against this, Mr. J.K. Shah, learned Additional Public Prosecutor appearing on behalf of the respondent - State has submitted that this is a systematic design of delaying the proceedings which are pending right from the year 1996 and such dilatory tactics has been visualized apparently by the court below and that is the reason the discretion is not exercised and on the contrary, the learned Judge has seen the filing of date and the application is aimed to delay the proceedings and that is the reason why even costs is also imposed and as such, the jurisdiction which has been exercised cannot be said to be illegal or suffering from vice of non application of mind in any form. That being so, the order does not call for any interference. Additionally, Mr. Shah, learned Additional Public Prosecutor has submitted that by virtue of concurrent jurisdiction lies both at the High Court as well as the court below in the sessions court which is the endeavour and the applicant should file revision application before the sessions court and straightway the applicant cannot invoke revisional jurisdiction of this Court and as such, has requested to relegate the applicant to the court of sessions where the revision application can be submitted. In view of this submission of Mr. Shah, learned Additional Public Prosecutor, learned advocate Mr. Trivedi in-rejoinder has submitted that there is no embargo in not approaching the court directly, on the contrary, the statute has permitted liberty to every litigants to approach the High

Court as well and as such, simply because straightway proceedings have been filed before this Court would not be a ground to throw away the revision application which has been submitted and for that purpose, has relied upon few decisions which are enumerated hereunder :-

1. In the case of Prabhu Chawla v. State of Rajasthan reported in 2016 Law Suit(SC) 866.

2. In the case of State of Gujarat v. Ashokkumar Lavjiram Joshi, reported in 2018 Law Suit (Guj) 490.

3. In the case of State of Gujarat v. Gaurang Mathurbhai Leuva & Ors., reported in 1999(3) GLR 2325.

5. Having heard the learned advocates appearing for the respective parties and having gone through the material on record, it prima facie appears that the learned Judge has disposed of the application below Exhibit-151 on the substantial ground that on previous occasion, application Exhibit-119 is disposed of which has attained finality and further the present application below Exhibit-151 is filed after almost a period of five months. One additional reason appears to be that an attempt is made to see that somehow this old pending case of 1996 may not be decided and as such, the order is passed. From the reading of the same it appears that Exhibit-119 is an application filed for further investigation under Section 173(8) of the Code of Criminal Procedure and same is filed with support of the few documents and as such, the request in Exhibit-119 was not pertaining to exhibition of documents. Further, undisputedly, it appears that these documents which are sought to be exhibited have been referred to, as contended by the learned advocate during the deposition of the investigating officer and as such, whether these documents deserves exhibition or not is not properly answered by the court below and further against the request of the applicant, no objection was raised by accused side. As a result of this, the core issue is not clearly answered by expressing specific conclusion. No doubt, it may be that the case is of old nature, but that would not mean that in a hot-hurried manner, the application can be disposed of by assigning no proper consideration. Delay may not defeat the justice and the reasons which have been assigned by learned Judge that Exhibit-119 is disposed of, this also should be treated as non-entertainable and as such, upon overall consideration of the order, it appears that the court below has not properly considered and dealt with the request whether these documents which are referred to are to be exhibited or not. So far as imposition of costs is concerned, delay may not be solely at the instance of the present applicant, the learned Judge while imposing cost ought not to have assumed that the delay has taken place only on account of filing of the application by the present applicant. In absence of any discussion on the basis of the material on record, imposition of cost appears to be not supported by valid reasons and as such, qua that also, the order suffers from vice of non application of mind.

5.1. Law on the issue of exhibition of documents is aptly considered by the High Court in past and several decisions including one of the decision which is rendered in the case of State of Gujarat v. Gaurang Mathurbhai Leuva & Ors., reported in 1999 (3) GLR 2325. While deciding the real issue as to whether the documents which are produced to be exhibited or not is to be dealt with rather peripheral circumstances or old case of 1996 and, therefore, this Court is of the opinion that application below Exhibit-151 is required to be reconsidered in light of the aforesaid circumstances by passing a fresh order, which would meet the ends of justice and, accordingly, this Court is of the opinion that the present proceedings are required to be disposed of on the following line, which would meet the ends of justice.

6. The impugned order dated 13.02.2019 passed below application Exhibit-151 in Criminal Case No. 641 of 1996 is hereby quashed and set aside and as a consequence thereof, the learned Judge i.e. learned 2nd Additional Civil Judge and Judicial Magistrate First Class, Mahuva, District : Bhavnagar is directed to decide application below Exhibit-151 submitted by the applicant afresh by granting opportunity to parties to the proceedings and shall pass a reasoned order, after dealing with the relevant submissions.

6.1. It is made clear that since the Court has remanded the proceedings back for taking a fresh decision, the Court has refrain from expressing any opinion on merit with regard to application at Exhibit-151. The request whether deserves consideration or not it would be independently left it open for the court below to re-examine the issue and pass a fresh order strictly in accordance with law.

7. With the aforesaid observations and directions, the present Criminal Revision Application stands partly allowed to the aforesaid extent.