

(2017) 03 GUJ CK 0116
In the Gujarat High Court
Case No : 10100 of 2016

JAYDEEP MAHENDRABHAI DHANDHAL

APPELLANT

Vs

STATE OF GUJARAT & ANR.

RESPONDENT

Date of Decision : 30-03-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#) - Saving of inherent powers of High Court
[Indian Penal Code, 1860](#), [Section 420](#),
[Section 471](#), [Section 467](#), [Section 465](#), [Section 120\(b\)](#) -
Cheating and dishonestly inducing delivery of property - Using as genuine a forged document - Forgery of valuable security, will, etc - Punishment for forgery - Concealing design to commit offence punishable with imprisonment
[Bombay Land Revenue Code, 1879](#), [Section 135\(d\)](#) - .

Citation : (2017) 03 GUJ CK 0116

Hon'ble Judges : J.B.Pardiwala

Bench : Single Bench

Advocate : MEHUL S SHAH, YOGENDRA THAKORE, PATHAK

Final Decision : Allowed

Judgement

1. Rule returnable forthwith. Ms. Pathak, the learned APP, waives service of notice of rule for and on behalf of the respondent No.1. Mr. Yogendra Thakore, the learned counsel, waives service of notice of rule for an on behalf of the respondent No.2.

2. By this application under section 482 of the Code of Criminal Procedure, 1973, the applicant-original accused No.2, seeks to invoke the inherent powers of this Court praying for quashing of the first information report being No.1/45/2016 registered before the Keshod Police Station, Junagadh for the offence punishable under sections 465, 467, 471, 420 and 120(B) of the Indian Penal Code.

3. The case of the prosecution may be summarized as under;

3.1 The dispute pertains to the land bearing Survey No.67, situated at the village Mendarda, District: Junagadh, admeasuring 10 acres and 18 gunthas. It is the case of the first informant that the land in question was owned by his father, namely, Valgebbhai Dhandhal. The father passed away in the year 1993. It is alleged that the father of the applicant herein created a bogus sale deed dated 19th April, 1984 in his favour with respect to the property in question, purported to have been executed by the father of the first informant. Thus, the crux of the case of the prosecution is the bogus sale deed of the year 1984. The first informant, being the son of Valgebbhai, asserts that the signature in the sale deed, of his father, is forged. In disputably, in the year 1984, the applicant herein was aged six years. Till the demise of Valgebbhai, i.e., the father

of the first informant, no one raised any issue with regard to the land in question. In the year 2006, for the first time, the name of Mahendrabhai, i.e., the father of the applicant herein came to be mutated in the record of rights on the strength of the sale deed of the year 1984. Prima facie, it appears that notice under section 135(D) of the Bombay Land Revenue Code was also not issued to the seller.

3.2 The day, the first informant came to know about the bogus sale deed, the first thing, he did, was to file a Regular Civil Suit No.20 of 2013 in the court of the learned Principal Senior Civil Judge, Mendarda for a declaration and permanent injunction. The suit is pending, as on date, and is in progress.

3.3 In the aforesaid background, I need to consider the role of the applicant herein in the alleged offence.

4. Mr. Thakore, the learned counsel appearing for the first informant and Ms. Pathak, the learned APP appearing for the State submitted that the allegations against the applicant herein are that, despite knowing that the sale deed is forged, the applicant got the original documents laminated. The endeavour on the part of the two learned counsel is to submit that the whole idea in getting the documents laminated, was to deprive anyone in inquiring about the genuineness of the signature. To put it in other words, according to both the learned counsel, the applicant herein, in the year 1984, could not have been a party in creating the alleged bogus sale deed, but he could be said to have played some role for the purpose of destroying the evidence.

5. I take notice of the order passed by this Court dated 6th June, 2016, which reads as under;

"According to the applicant who has been arraigned as an accused in the complaint being I-CR No.45 of 2016 registered with Keshod Police Station District Junagadh for the offences punishable under Sections 465, 467, 468, 471, 420 and 120B of the Indian Penal Code, he was 6 years old when his father's name in the sale deed was executed. The date of sale deed was

19.4.1984.

It is further his say that the Civil Suit is already pending being Regular Civil Suit No. 20 of 2013 filed against the applicant and others for declaration and permanent injunction in respect of the validity of the said sale transaction and the above Sale-Deed was rejected by the Court.

Mr.Mehul Shah, learned advocate appearing for the applicant has urged that the complaint is nothing but sheer misuse of process of law . Issue Notice returnable on 28th June, 2016.

Mr.Ronak Rawal, learned APP waives service of notice for and on behalf of the respondent -State.

Let there be an ad-interim relief in terms of Para-20(b)."

6. I am of the view that there is no case worth the name against the applicant herein. The disputed document, i.e., the sale deed is being looked into by the Civil Court as on date. The proceedings before the Civil Court are yet to be concluded. The civil proceedings should proceed further in accordance with law.

7. Ms. Pathak, the learned APP, pointed out that for the purpose of investigation, the police has not been able to collect the dispute document as it is in the custody of the civil court. For the purpose of investigation, the Investigating Officer can always request the court concerned to part with the document. If any such application is filed by the Investigating Officer, the court concerned shall look into the same and pass an appropriate order in accordance with law.

8. I am informed that in the past, such application was filed by the Investigating Officer, but, as this matter was pending and this Court had stayed the investigation, such application was rejected. Now since this matter is being disposed of, it shall be open for the Investigating Officer to file a fresh application.

9. In the result, this application succeeds and is hereby allowed. The first information report being No.1/45/2016 registered before the Keshod Police Station, Junagadh is quashed so far as the applicant herein is concerned. This order shall have no bearing so far as the civil proceedings are concerned. The civil proceedings shall be decided by the court concerned on its own merits, and on the basis of the evidence that may be led by the parties. Rule is made absolute to the aforesaid extent.

Direct service is permitted.