(2017) 01 GUJ CK 0108

In the Gujarat High Court

Case No : 4288 of 2013

JAYESHBHAI CHIMANBHAI PATEL & ANR. APPELLANT

Vs

STATE OF GUJARAT & ANR. RESPONDENT

Date of Decision : 25-01-2017

Acts Referred:

Code of Criminal Procedure, 1973, Section 482, Section 155(2), Section 46(4) - Saving of inherent powers of High Court - Information as to non-cognizable cases and Investigation of such cases - Arrest how made
Indian Penal Code, 1860, Section 420, Section 468, Section 471, Section 114, Section 467, Section 409, Section 120(b) - 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 - Criminal breach of trust by public servant, or by banker, merchant of agent - Concealing design to commit offence punishable with imprisonment

Citation : (2017) 01 GUJ CK 0108

Hon'ble Judges : B.N. Karia

Bench : Single Bench

Advocate : MAHESH BHAVSAR, ?ASHISH M DAGLI

Judgement

1. This application has been filed under section 482 of the Code of Criminal Procedure for quashing of FIR being C.R.No.I-159/2012 qua the present applicants (original accused no.5 and 6) registered with J.P. Road Police Station, Vadodara for the offences punishable under section 409, 420, 467, 468, 471, 120(B) and 114 of the Indian Penal Code.

2. The facts and circumstances giving rise to this case are that;

2.1 The father of the applicant no.1 namely Chimanbhai Purshottambhai Patel was the owner of one building known as "C.P. Point", which was purchased from Hindustan Earth Movers in the year 2001. That one Estate Broker namely Danabhai informed the complainant-respondent no.2 in the year 2006 that four shops were available for sell in C.P.Point, and therefore, the complainant was inquired about his desire to purchase the same. The complainant also went to the place i.e. C. P. Point and decided to purchase four shops at around cost of Rs. 10,20,000/- (Rupees Ten Lacs Twenty thousand only). The payment was made by the complainant categorically mentioned in the FIR. That an amount of Rs. 6,15,000/- (Rupees Six Lacs Fifteen thousand only) was paid, against which, Chimanbhai Patel as well as Alpeshbhai Patel issued receipts under their signatures. On 30.09.2006, the complainant alongwith the Estate Broker Danabhai Bharwad as well as Kiritbhai Patel, Ajit Vaghela alongwith Santosh Yadav went to the C.P.Point building, wherein Chimanbhai Patel, Jayeshbhai Patel-applicant no.1 and his brother Alpeshbhai Patel were present and thereafter, 2 cheques were also given by the complainant. In all an amount of Rs. 4,05,000/- (Rupees Four Lacs Five thousand only) was paid towards four shops.

2.2 Thereafter, on a request made by the complainant about the construction of the shops and sale-deed, upon which, he was informed that construction of the shops is likely to be taken some time, and therefore, the complainant got a doubt that accused persons including the applicants are not having good intention. Thereafter, one power of attorney was prepared by Chimanbhai Patel in favour of Mr. Santosh Yadav to make transaction of the aforesaid shops purchased by the complainant. Further, an amount of Rs. 2,20,000/- (Rupees Two lacs Twenty thousand only) was demanded, which was paid by the complainant. On 03.10.2008, a registered sale deed of the aforesaid shops was executed through power of attorney holder Shri Santosh Yadav with the office of the Sub Registrar bearing No. 10669/2008, and thereafter, entry was also made in the property card and city survey record on 31.08.2008 vide entry No. 3325, which was certified on 28.11.2008. It was impressed to the complainant that the intention of the accused persons, from the beginning, was not good and they were making false statements on numerous occasions that they are in financial constraints, on account of which, construction work of the shops was not completed and they were frequently demanding money from the complainant. The allegations were made in the complaint that on 01.07.2010, Chimanbhai Parsottambhai and Alpesh Chimanbhai Patel had asked the complainant to visit their house, and thereafter, on their request, the complainant visited their house, wherein accused persons were present along with the present applicants and he was informed that two showrooms and one flat on second floor were also required to be sold by them as they were facing financial constraints, and therefore, he was asked to make them help.

2.3 The complainant, after discussing the issue with his daughter Naynaben as well as his wife, contacted Shri Chimanbhai as well as his two sons including the applicant no.1. At that time, he was informed that the flat would be sold at the rate of Rs. 16,75,000/- (Rupees Sixteen Lacs Seventy Five thousand only) and 2(two) showrooms will be sold at the rate of Rs. 35,00,000/- (Rupees Thirty Five Lacs only). As it was decided by the complainant to purchase the aforesaid flat and two showrooms from the accused, he paid an amount of Rs. 40,55,000/- (Rupees Fourty lacs Fifty Five thousand only) through cheuqe and cash before July, 2010. Thereafter, on 03.07.2010, one registered agreement to sell No. 8673 was executed in favour of Naynaben, daughter of the complainant and further power of attorney was given to him for aforesaid flat along with possession receipts. Shri Chimanbhai also executed one affidavit admitting registered sale deed of shop No. 1, 2, 3 and 4 and thereafter, a registered sale deed of the flat was executed by the complainant in favour of his daughter namely Naynaben in a capacity of power of attorney of the aforesaid flat. The amount of Rs. 24,00,000/- (Rupees Twenty Four lacs only) was paid for consideration of two showrooms at first floor by the complainant, against which, Chimanbhai Patel had made an agreement to sell with the daughter of the complainant on 31.07.2010. Thereafter, under the shock and surprise, the complainant came to know that shops No. 3 and 4 were sold to one Ajit Sarkar and Aarti Sarkar through registered sale deed by Shri Chimanbhai Patel, since the complainant was not visiting the aforesaid property, and therefore, he made aware on 31.08.2010 from the office of the Sub Registrar and came to know that properties were sold to aforesaid persons and others, a loan of Rs. 21,00,000/- (Rupees Twenty One lacs only) was taken through Bank of India on 30.08.2008 by mortgaging the said flat property. He also came to know that present applicant No.1 gave the shops No. 1 and 2 as well as two showrooms on the first floor of C.P. Point to one Mr. Sarfaraz through registered agreement to sell no. 4074 on 11.04.2012. As all the accused have committed the offence alleged in the complaint, this application is filed by the present applicants qua the accused no. 5 and 6 arraigned in the complaint, with a request to quash and set aside the complaint.

3. I have heard learned advocate Mr. Mahesh Bhavsar appearing on behalf of the applicants and learned advocate Mr. Ashish M. Dagli appearing on behalf of the respondent no.2 as well as learned APP Mr. Rutvij Oza appearing on behalf of the respondent no.1-State.

4. It was submitted by Mr. Bhavsar, learned advocate for the

applicants that as per the complaint itself, all the documents alleged to have been executed by the accused no.1. The fact remains that the present applicants being accused no. 5 and 6 have not executed any single document or they have not put any signatures in the alleged document. That they are innocent and have played no role in commission of alleged offence. Even bogus documents are generated by the complainant himself, for which, application dated 4th August, 2011 was given, but police has not investigated the same. It is further argued by learned advocate Mr. Bhavsar for the applicants that from bare reading of FIR, no offence as alleged is made out against the present applicants. That applicant no.1 has legally got the property in his share in family partition and therefore, he gave the property on rent. That giving property on rent can never be treated as an offence. That even as per FIR, no documents are forged or fabricated by the applicants. That the FIR was filed after filing the Civil Suit with the sole intention to harass the accused persons. The action of the complainant is not bonafide. The alleged transactions are of completely civil nature, for which, civil suits are pending and they are to be decided by the Civil Court. That the dispute is of civil nature and it has been given criminal colour by the complainant, and therefore, the FIR is required to be quashed. That the present applicant no.1 was released on bail vide order dated 27th December, 2012 by this Hon''ble Court in Criminal Misc. Application No. 16928/201, while the applicant no.2 was released on bail by the learned District Judge, Vadodara in Criminal Misc. Application No. 2053/2012 by an order dated 09.11.2011. That even if police has filed charge sheet, the FIR can be quashed by this Court, when no prima facie case is found against the applicants/accused. From the entire police papers, not a single word as averred by the investigating agency about any role alleged to have been committed by the applicant no.2 Varshaben.

That applicants were not partners of the Akash Enterprize and they have not accepted any money, they have not given any promise to the complainant, they have not executed any document, they have no right or share at the relevant point of time in the disputed properties, and therefore, they are unnecessarily dragged into the criminal proceedings by the complainant without any fault on their part.

5. That however, one complaint was submitted by the applicants on 04.08.2011 against one Bhagubhai Mavjibhai Patel and others before Police Commissioner, as bogus documents were prepared, threats were given to vacate shop No. 1, 2, 3 and 4 and to kill. But, no action was taken by the police against Bhagubhai Mavjibhai Patel and others as the police is acting in collusion with Bhagubhai Mavjibhai Patel-Complainant. He has further argued that accused no.6 was arrested at 23.40 hours on 5th November, 2012 within no time after registration of the complaint, which was against the provisions of Section 46(4) of the Code of Criminal Procedure, and therefore, the complaint was made before the learned Chief Judicial Magistrate, Vadodara and on 1st December, 2012, it is observed by the Court that the accused no.6 has not generated any document. Hence, it was requested by learned advocate Mr. Mahesh Bhavsar appearing on behalf of the applicants to quash and set aside the complaint being C.R.No. I-159/2012 qua the present applicants (original accused no.5 and 6) registered with J.P. Road Police Station, Vadodara.

Learned advocate Mr. Bhavsar for the applicants, in support of his arguments, has relied on (1) 1992 Suppl(1) Supreme Court Cases-335, (2) (2010)10 Supreme Court Cases-361, (3) (2009)8 Supreme Court Cases 751-Note "C", (2000)3 Supreme Court Cases-269, (4) (1977)1Supreme Court Cases 505 as well as unreported judgment (5) 2014(0) AIJEL-HC 232048 (Arvindbhai Shantilal Modi Versus State of

Gujarat) and (6) 2014(0) AIJEL-HC 231905 (Narendra Maganbhai Patel Versus State of Gujarat).

6. On the other side, Mr. Ashish M. Dagli, learned advocate for the respondent no.2 vehemently opposed the submissions made on behalf of the applicants and argued that the disputed property was in the name of Chimanbhai Patel. Management of property was done by his two sons namely Alpeshbhai Patel and Jayeshbhai Patel-present applicant no.1. At the time of transaction of purchasing of the property in dispute by the complainant, the conditions were fixed and finalized in presence of the applicants and Chimanbhai Patel and his son Alpeshbhai and during the investigation of the offence, the police has made detailed investigation and found sufficient evidence against the accused. Hence, charge sheet was filed by the investigating officer on 18th May, 2010. That sale deed of the property was executed by Shri Chimanbhai in favour of the complainant on 3rd October, 2008. Thereafter, one MOU was prepared by father and his two sons to waive all the rights of the complainant from the disputed property i.e. four shops in C.P. Point as he was the owner on the basis of the sale deed. MOU was prepared on 19th May, 2010. That Aakash Enterprise is a partnership firm, in which, the present applicant no.1 was having the interest. That present applicants were fully aware with the transactions carried out by one Chimanbhai in favour of the complainant, accepting money, issuing receipts and vouchers in favour of the complainant. However, an agreement to rent was executed by the present applicant no.1 in favour of Nilesh Jayantibhai Patel, whose statement was recorded by the police during the investigation, who had rented the shop no.1. The second agreement was also executed by the present applicant no. 1 regarding shop no.2, under his signature. The third agreement of the showrooms on second floor was also executed by the applicant no.1. Before that,

equitable mortgage was executed in favour of the Bank of India by Shri Chimanbhai and present applicant no.1-Shri Jayeshbhai Patel in the year 2005. That another supplementary agreement in form of equitable mortgage was also executed by father and son on 13th August, 2008.During the investigation, the police has recorded statements of different witnesses namely Kiritbhai, Ajitkumar, to whom the property bearing shop No. 3 and 4, sold again by Shri Chimanbhai, That Chimanbhai and other family members have entered into second and third transaction of the said property after selling it to the complainant. Another complaint was also lodged against Chimanbhai and his family members, which is a part of charge sheet. Detail evidence was required to be recorded before the Trial Court as they are prima facie involved in the offence. At this juncture, the power vested to this court under Section 482 of the Code of Criminal Procedure would not be exercised in the facts and circumstances of the case. In support of his contentions, learned advocate Mr. Dagli appearing on behalf of the respondent no.2 has relied on 2009 Criminal Law Journal-2585 (Orissa High Court) and AIR 2009 Supreme Court 2383 and requested to dismiss the present application.

7. Learned APP Mr. Rutvij Oza appearing on behalf of the respondent no.1-State has supported the arguments advanced by learned advocate Mr. Ashish M. Dagli appearing on behalf of the respondent no.2 and argued that approach of the court should be very sparingly and with circumspection while exercising the power under Section 482 of the Code of Criminal Procedure. He has further argued that complaint has to be examined as a whole, but without examining the merits of the allegations made therein, no final conclusion can be arrived. That prima facie case is made out and detail investigation was carried out by investigating officer and it is

found that there is sufficient evidence against the accused, which may establish the charge against him. He has further submitted that mere fact that offence committed is of a civil transaction by itself would not be sufficient to quash the complaint. That from the facts, in the factual matrix quashing of complaint would not be warranted. Ultimately, it was requested by him to dismiss the present application.

8. Heard learned advocates for the respective parties, learned APP Shri Rutvij Oza for the respondent no.1-State and having gone through the averments, documentary evidence placed on record, charge sheet papers produced on record, it appears that land bearing Plot No. F/41/B of survey No. 356/A out of survey No. 33 was purchased by the accused no.1-Chimanbhai Patel from Hindustan Earth Movers in the year 2001 by paying consideration amount of Rs. 14.50 lacs. Thereafter, upon the said piece of land building namely C.P. Point was being constructed. It appears from the record that the original owner of the said building was Chimanbhai Purshottambhai Patel-accused no.1 and father of the applicant No.1 (original accused no.5). It also appears from the contentions made in the complaint that building of C.P.Point was under construction and complainant Bhagubhai intended to purchase four shops situated on the ground floor of the said building. That part payment of Rs. 6,15,000/- was made, for which, accused no.1-Chimanbhai Patel and accused no.2 Alpesh Patel issued receipts of the payment. Thereafter, a cheque of Rs. 2,50,000/- dated 30.09.2006 of Dena Bank, Ellisbridge Branch, Ahmedabad being No. 361816 was issued. Total amount Rs. 4,05,000/- was paid towards sale consideration. Both the cheques were issued in the name of Akash Enterprise. Thereafter, accused no.1 Chimanbhai Patel executed agreement to sell, which was notarized and one power of attorney was also executed in favour of

Santoshbhai Laxmanbhai Yadav. At the time of execution of agreement to sell, entire amount of sale consideration was paid for the shops by the complainant. Thereafter, market price of shops was increased and the construction of shops was not completed. That accused no.1, 2 and 5 were intended to get difference of market price of the shops. On payment of an additional amount as per demand made by them including the present applicant no.1, an agreement to sell bearing No. 2839/2008 was executed by power of attorney Santoshbhai Yadav in favour of the complainant on 15.03.2008. Thereafter, the said power of attorney also executed registered sale deed No. 10669/2008 in favour of the complainant for four shops and entry No. 3385 was mutated in property card on 31.10.2008, which was certified on 28.11.2008.

9. Thereafter, on the request made by the accused persons as they were facing financial constraints, the complainant became ready to purchase one flat on second floor and two showrooms. Sale consideration of flat was fixed at Rs. 16,75,000/- and sale consideration of two showrooms was fixed at Rs. 35,00,000/-. The complainant paid cash and cheque amount of Rs. 40,55,000/- before July-2010 and registered agreement to sell No. 8673 dated 03.07.2010 was executed in favour of Nayanaben daughter of complainant and power of attorney was also executed in favour of the complainant for the benefit of Nayanben. Even Kabja Pavti of the flat was also issued. An affidavit was executed by the accused no.1 admitting registered sale deed of shop No. 1,2, 3 and 4 executed by power of attorney. Thereafter, the complainant, being a power of attorney holder of the second floor flat, executed registered sale deed. It is also alleged that for two showrooms of first floor, sale consideration amounting to Rs. 24,00,000/- was paid, for which, agreement to sell was executed on 31.07.2010 in favour of daughter

of the complainant namely Nayanaben by the accused no.1 Chimanbhai. Thereafter, it appears that accused no.1-Chimanbhai sold shop No. 3 and 4 to one Ajit Sarkar and Aarti Sarkar. Therefore, the complainant made a search in Registrar Office on 31.08.2010 and he came to know that accused no.1 has executed registered agreement to sell bearing No. 6406 on 23.07.2009 in favour of Shri Ajit Sarkar and Aarti Sarkar and also executed registered sale deed No. 10043 dated 13.08.2010 for shop No.3 and 4. He further came to know that on 30.08.2008 loan of Rs. 21,00,000/- was obtained from Bank of India, Vadodara and shops were mortgaged. Even for shop No. 1 and 2 and for two showrooms, a registered agreement to sell was executed on 11.04.2012 in favour of one Sarfaraz. It transpires from aforesaid transactions that fact of mortgaging the building was suppressed while executing registered agreement to sell and sale deed in favour of Nayanaben. It also appears that Rs. 6,00,000/-was received while executing agreement to sell for showroom situated on shop No. 3 and 4 in favour of Arup Ajit Sarkar.

10. The complainant carried out search in the office of Sub Registrar and he came to know that agreement to sell was executed in favour of Sarfaraz for shop no. 1 and 2 and two showrooms situated on the first floor. However, amount of sale consideration was duly paid for shop No. 1 to 4, the accused no.1 Chimanbhai Patel mortgaged the property of C.P.Point in Bank of India on 30.08.2008, which was never disclosed and informed to the complainant even in the document executed by him. On a visit made by complainant at the site, he found that in shop No. 1 one hotel was running and in shop No.2, one Ice-cream shop was running. Above shops, there is a showroom, which is rented by accused no.5 i.e. applicant No. 1-Jayeshbhai to Dancing School. It is undisputed that shop no. 1 to 4 were purchased by the complainant from the accused No.1

Chimanbhai Patel and received full amount of aforesaid shops. However, the accused no.1 executed registered sale deed for shop no. 3 and 4 in favour of Ajit Sarkar and Artiben Sarkar. The entire building was mortgaged with the Bank of India and loan of Rs. 21,00,000/- was obtained. That without getting any permission from the bank, flat and showroom were sold to Nayanaben, daughter of the complainant by executing agreement to sell. Even partition deed was executed by accused no.1 in favour of the applicant no.1- Jayeshbhai (accused no.5). It appears from the record that a meeting was arranged at the time of first transaction as well as of the second transaction while the complainant was intended to purchase four shops and show rooms as well as flat. Many transactions were also carried out in presence of the present applicant no.1 and his father Chimanbhai Patel and his brother Alpeshbhai Patel. The applicant no.1 was aware with the aforesaid transactions such as selling of 4 shops to the complainant, agreement to sell executed in favour of the complainant, power of attorney executed in faour of Santosh Yadav, money receipts issued by his father and his brother on behalf of Akash Enterprise, meeting for discussing the sale transaction of the property with the complainant, fixing the price, executing the agreement to sell of the flat and showrooms, issuing cheques and cash amount by the complainant to Shri Chimanbhai. All the facts were under the knowledge of the applicant no.1. However, he has not put his signature in any of the documents of the aforesaid transactions, but all the transactions were carried out under his guidance or instructions. Moreover, a partition deed was executed by his father in favour of the applicant no.1 and having knowledge of the facts that above said shops, showrooms and flat were sold to the complainant. During the investigation, police has recorded the statements of different witnesses and they also supported prosecution case. From the police papers also, it transpires that prima facie involvement of the applicant no.1 is found, however, no signature was made by him in any of the documents. So far as the applicant no.2 is concerned, no involvement in the offence is found from the police papers. Therefore, so far as the applicant no.2 is concerned, she cannot be dragged into the criminal proceedings. Learned advocate Mr. Bhavsar appearing on behalf of the applicants has submitted copies of the Civil Suits, pending before Civil Court at Vadodara, filed by the either side. Pending of the Civil Suits in respect of the same property does not itself say that the court to come to the conclusion that civil remedy is the only remedy available to the applicants herein. The object of the criminal law is to punish an offender who commits an offence against the person, property or the State for which the accused, on proof of the offence, is deprived of his liberty and in some cases even his life. It is an anathema to suppose that when a civil remedy is available, a criminal prosecution is completely barred.

11. By placing reliance in a case of Dr. Sharda Prasad Sinha versus State of Bihar reported in (1977) 1 Supreme Court Cases 505 , Mr. Bhavsar, learned advocate for the applicants argued that where the allegations set out in the complaint or chargesheet do not constitute any offence, the High Court in exercise of its inherent power may quash the Magistrate''s order taking cognizance of the offence. In other case of Narendra Maganbhai Patel versus State of Gujarat (2014(0) AIJEL-HC-231905), it is held that no case of forgery worth the name could be said to have been made out by the original complainant, or criminal breach of trust as defined under Section 405 of IPC and therefore, the complaint was quashed by the Court. In another case of Arvindbhai Shantilal Modi versus State of Gujarat (2014(0) AIJEL-HC 232048), it is held that no material was found from

the FIR constituting any cognizable offence, then it was not sufficient ground that the police to proceed with the investigation without there being any order of the Magistrate as per Section 155(2) of Code of Criminal Procedure as observed by the court. It was further found that no offence of forgery could be said to have been committed even if it is accepted case of the first informant to be true. The complaint was quashed and application was allowed.

12. Each case would required to be considered on factual facts. In the instance case, prima facie, involvement of the present applicant no.1 namely Jayeshbhai Patel is found by this court from the facts of this case. There is no restriction in quashing the FIR, if the charge-sheet is filed by the investigating agency during the pendency of this application.

13. In a case of "State of Haryana and others V/s. Bhajanlal and others" reported in 1992 Supp(1)Supreme Court Cases-335, it is observed that in the following categories of cases, the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, can be exercised by the High Court either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulate and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused; (2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code; (3) where the uncontroverted allegations made in the FIR or ''complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused; (4) where the allegations in

the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code; (5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused; (6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a

criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party; (7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

14. In a case of Padma Charana Behera v. State of Orissa and others reported in 2009 Criminal Law Journal-2585 (Orissa High Court) relied by Mr. Ashish Dagli, learned advocate for the respondent no.2, it is held that the prayer of quashing criminal proceedings has to be exercised very sparingly and with circumspection and that too in the rarest of rate cases and the court cannot be justified in embarking upon made in the FIR or complaint and the extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the court to act according to its whims and caprice. From the facts of this case, it is evidence that there is sufficient evidence against the applicant no.1, which may establish the charge against him even if the malafide is established, the proceedings cannot be quashed.

15. In a case of Ravindra Kumar Madhanlal Goenka and Another versus M/s. Rugmini Ram Raghav Spinners P. Ltd. Reported in AIR 2009 Supreme Court 2383, Hon''ble Supreme Court observed that while considering the facts that the defence case may be pleaded, but said defence was required to be considered at the later stage and not at this stage. The appellants would have ample opportunity to

raise all the issues urged in this appeal at an appropriate later stage, where such pleas would be and could be properly analyzed and scrutinized. Whatever defence or arguments canvassed by the learned advocate for the applicants, he can be urged and provided an opportunity to raise issue during the course of trial. This court is of the opinion that while entertaining this application under Section 482 of the Code of Criminal Procedure, the materials furnished by the defence cannot be looked into at this stage, but at the time of trial.

15. In this case, the investigation officer has completed the investigation and found substance during the investigation and hence, has filed the charge-sheet before the lower court and it would be premature to say that applicant no.1 is not involved in the offence or is an innocent.

16. In view of the aforesaid position, this Court has declined to interfere with the criminal proceedings initiated at this stage qua the applicant no.1 Jayeshbhai Chimanbhai Patel is concerned, and therefore, the present application shall be allowed qua the applicant no.2-Varshaben Jayeshbhai Patel and dismissed qua the applicant no.1 Jayeshbhai Chimanbhai Patel.

17. The observations made by this Court would not affect any other criminal proceedings against the present applicant no.2 or any other accused pending before any other Court. It is clarified that concerned court, in such an event, would decide the said proceedings without influence of this order and on its own merits.

18. Rule is made absolute qua applicant no.2 and is discharged qua applicant no.1. Direct Service is permitted.

