(2016) 11 GUJ CK 0006

In the Gujarat High Court

Case No : Criminal Revision Application (Against Order Passed By Subordinate Court) No. 318 Of 2016

Jaysukh Jayesh Mulji Ranpariya (Patel) APPELLANT

Vs

State of Gujarat RESPONDENT

Date of Decision : 10-11-2016

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 227, Section -397, Section 401

Citation : (2017) 1 GCD 474

Hon'ble Judges : Mr. Z.K. Saiyed, J.

Bench : Single Bench

Advocate : Mr. Nd Nanavati, Senior Advocate With Mr Nikunj Kanara, Advocates, for the Applicants No. 1; Public Prosecutor, for the Respondents No. 1

Final Decision : Allowed

Judgement

Z.K. Saiyed, J.—The original accused No.2 of Criminal Case No.2723 of 2013 has filed this Revision Application against the order dated 19.2.2016 passed below discharge application Ex.9 by the learned Chief Judicial Magistrate, Jamnagar.

2. Heard Mr.N.D.Nanavati, learned Senior Advocate with Mr.Nikunj Kanara, learned advocate for the applicant and Mr.N.J.Shah, learned APP for respondent - State.

3. The brief facts of the case are that, accused Nos. 1 to 6 and 11 had created forged and fabricated power of attorney by affixing photographs of other persons despite original owners of the land bearing Survey Nos.322, 323, 3641 situated at village Kansumara, Dist. Jamnagar were expired and not in existence and sold the said lands one after another knowing fully well that the document prepared by them is false and fabricated and used the said document as true and genuine. It is further alleged that accused Nos.7 to 10 utilized said false and bogus document as true and correct in revenue department. It is alleged that accused

persons sold said land to one Bharat Amratlal - accused No.1 by registered Sale Deed No.7752/09 dated 3.9.2009 on the basis of said fake power of attorney given to Nemchand Fulchand (Naipul alias Vipul). It is alleged that subsequently within five days, accused No.1 - Bharat Amratlal sold land in question to Bhaya Sumat Goriya - accused No.6 by Agreement to Sale dated 9.9.2009, wherein one Arjan Rambhai put his signature as witness.

4. It is further alleged that applicant and his other accomplices had received consideration price for the transaction of plots of Green City from witness No.25 Tejabhai Trikambhai Bagda by taking him into confidence, but no plots were given to the said witness and, therefore, accused persons again sold land in question to witness No.25 viz. Tejabhai Trikambhai Bagda by registered Sale Deed No.2459/10 on dated 2.3.2010, wherein it is alleged that applicant viz. Jayesh M. Patel and Bhaya Sumat put their signatures as witnesses in the said Sale Deed. It is also alleged that Agreement to Sell dated 9.9.2009 executed by accused Bharat Amrutlal to accused Bhaya Sumat Goriya before the Notary was subsequently cancelled by executing agreement dated 2.3.2010 before the notary wherein the applicant has put his signature as witness. It is further alleged that accused persons have misused the fake and fabricated document knowing fully well as it being true and genuine in the revenue record and thereby committed offences of fraud, cheating and breach of trust.

5. Mr. N.D. Nanavati, learned Senior Advocate appearing with Mr.Nikunj Kanara, learned advocate for the applicant has contended that the order passed by the Court below is contrary to law and facts on record and hence the same deserves to be quashed and set aside. He has contended that impugned judgment and is incorrect, improper, invalid and bad in law and hence the same deserves to be quashed and set aside.

6. It is the duty of the Court to consider the entire record of the case and documents produced before it and is supposed to come to conclusion after appreciating the entire record and documents placed before it to the effect that whether prima facie and convincing case is made out or no incriminating evidence is found against the accused person who are before the Court. If the answer is in affirmative then accused is required to be discharged from the alleged offence.

7. He has further contended that learned Judge has failed to appreciate the evidence and documents on record from which it is prima facie established that no case is made out against the accused and, therefore, the impugned order passed by the learned Judge is contrary to the provisions of Sections 239 of the Code of Criminal Procedure. He has further drawn attention of the Court to the complaint filed by the complainant as well as the statements recorded by the Investigating Officer during the investigation and contended that it does not reveal the ingredients of offences under Sections 406, 420, 467, 468 and 471 of the Indian Penal Code against the present applicant. When the ingredients of alleged offences are not established prima facie, the order passed by the learned

Judge is erroneous and illegal.

8. He has further contended that in the present case applicant is simply a signatory in the third Sale Deed and at the event of filing of the first charge sheet name of the present applicant was shown in Column No.2 as so called accused and, therefore, present applicant obtained anticipatory bail from this Court. Thereafter investigation was carried out and present applicant was arrested and he was released on bail. He has contended that so far as allegation made against the present applicant is concerned,it is required to be noted that to fulfil ingredient of Sections 406 and 420 of the Indian Penal Code ingredient of Sections 405 and 415 of the Indian Penal Code are prima facie required to be established. He has drawn attention of the Court to the provisions of Section 405 of the Indian Penal Code and contended that so far as definition of criminal breach is concerned, main ingredient is entrustment or dominion over the property. He has contended that even from contents of the complaint as well as statement of all witnesses and documents produced on record prosecution could not prima facie establish to show that said entrustment and dominion over the property was established on the present applicant.

9. He has contended that so far as provisions of Section 415 of the Indian Penal Code are concerned, said ingredients are not established. He has contended that forgery and forged documents used as genuine and criminal breach of trust are also not proved prima facie and established on record. He has drawn attention of the Court to the third Sale Deed made on 2.3.2010 in which present applicant has signed at the end of the document as witness. He has contended that, it is alleged that specimen signature of the present applicant was obtained. He has contended that, in fact, Investigating Agency has not obtained specimen signature of the present applicant and not sent to FSL. He has read opinion of the hand writing expert regarding forged document and contended that it is admitted fact that present applicant is simply a signatory and that was made by him without intention and knowledge regarding forgery.

10. He has contended that present applicant has no connection or relation with the co-accused and nothing is received by him in the form of money by way of entrustment or dominion over the property. He has read last column of the charge sheet and contended that even as per allegations made by prosecution is that present applicant has signed in the third Sale Deed as witness. He has read statement of the witnesses produced on record and contended that so far as role of the present applicant is concerned, he is simply a witness in the document and no reason or finding is recorded by the learned Judge to club present applicant in the said offence as co-conspirator or offender of criminal breach of trust or cheating or forgery. He has further contended that as per say of the prosecution the document in question was not prepared by the present applicant and it was signed by him as witness.

11. He has drawn attention of the Court to the observations made by the Apex Court in the case of Central Bureau of Investigation, Hyderabad v.K. Narayana

Rao, 2012(3) GLH 373 and contended that Apex Court has laid down guide lines for the same. In the present case when prima facie ingredient of said offence is not established before the learned Judge from perusal of the charge sheet papers and statement of the witnesses, the present applicant is entitled to discharge from the alleged offence. He has read judgment and order of the learned Judge and contended that no reason is given by the learned Judge and even not a single observation is made that under which circumstances present applicant is involved in the present case. He has fairly contended that present applicant can be considered by the prosecution as witness and he would be a star witness of the prosecution. Lastly he has prayed to quash and set aside the impugned judgment and order passed by the learned Judge.

12. Mr.N.J.Shah, learned APP appearing for the respondent - State has opposed present application and contended that as per the provision of Section 120B of the Indian Penal Code there is direct evidence to show that present applicant is a conspirator with co-conspirator. He has read contents of the complaint as well as statement of the witnesses and contended that looking to the allegations made against the present applicant, it is serious in nature and when from the evidence it is established that present applicant has joined his hands with co-accused to commit the said offence as a signatory, the Court has to presume that he was entrustee and dominion over the property and some gain was obtained by the accused. He has prayed to dismiss present application.

13. I have heard the learned counsel of both the sides at length and in great detail. I have also gone through the papers produced before me and the judgment and order passed by the learned trial Judge. From the charge sheet papers and last column of charge sheet it appears that Investigating Agency has disclosed that in the third Sale Deed present applicant has signed as witness. From perusal of the papers it appears that specimen signature of co-accused were obtained and were sent to FSL with the disputed document. It prima facie appears that specimen signature of present applicant was not collected by the Investigating Agency and even Investigating Officer has not bothered to send it to expert. Therefore, it is admitted fact that present applicant has signed as witness on the disputed document. I have gone through the provisions of Sections 405 and 415 of the Indian Penal Code with the meaning and definition of forged document and forgery and criminal conspiracy. I have also perused evidence from the charge sheet papers to consider that so far as prima facie any ingredient regarding agreement as per provisions of criminal conspiracy is established or not. I am of the prima facie opinion that prosecution could not produce any cogent evidence to show that there was an agreement between the co-conspirator with present applicant.

14. I have also perused statement of the witnesses, complaint and charge sheet papers and last column of the charge sheet to find out that whether entrustment and dominion over the property prima facie is established against the applicant or not. In reply, prosecution could not produce any evidence in support of main

ingredient of Sections 405 and 415 of the Indian Penal Code.

15. In the case of Devender Pal Singh v. State N.C.T. of Delhi, AIR 2002 SC 1661, Apex Court has observed that, where the conspiracy alleged is with regard to commission of a serious crime of the nature as contemplated in Section 120B read with the proviso to subsection (2) of Section 120B, then in that event mere proof of an agreement between the accused for commission of such a crime alone is enough to bring about a conviction under Section 120B and the proof of any overt act by the accused or by any one of them would not be necessary. The provision in such a situation, do not require that each and every person who is a party to the conspiracy must do some overt act towards the fulfilment of the object of conspiracy, the essential ingredient being an agreement between the conspirators to commit the crime and if these requirements and ingredients are established, the act would fall within the trapping of the provisions contained in Section 120B.

16. I have also verified charge sheet papers. It is true that prosecution could not prima facie establish agreement with the co-conspirator. Before a person can be said to have committed criminal breach of trust within the meaning of Section 405 of the Indian Penal Code, it must be established that he was either entrusted with or entrusted with dominion over property which he is said to have converted to his own use. In order to establish, "entrust or dominion" over property to an accused person the mere existence of that person''s dominion over property is not enough. It must be further shown that his dominion was the result of entrustment.

17. So far as offence relating to forgery is concerned, in the case of Ram Narayan Popli v. C.B.I. (2003) (3) SCC 641 Apex Court has observed that in order to constitute forgery, the first essential is that the accused should have made a false document. The false document must be made with an intent to cause damage or injury to the public or to any class of public or to any community. The questions are : (i) is the document false, (ii) is it made by the accused, and (iii) is it made with an intent to defraud. If all the questions are answered in the affirmative, the accused is guilty. In connection of the said observations I have minutely perused documents, statement of the witnesses and charge sheet papers. It is prima facie established that present applicant has made signature as a witness at the bottom of the third Sale Deed. I am of the opinion that learned Judge has committed grave error to reject Ex.9 application. In this case present applicant can be cited as witness of the prosecution to support genuineness of called forged documents i.e. third Sale Deed.

18. Present Criminal Revision Application is allowed. The judgment and order dated 6.2.2016 passed below Ex.9 in Criminal Case No.2723 of 2013 by the learned Chief Judicial Magistrate, Jamnagar, is hereby quashed and set aside.

19. Record and proceedings, if any, be sent back to the trial Court concerned, forthwith.

