

(2009) 10 GUJ CK 0108
In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 2941 of 2009

Kasam Hussain Hathila and Another	Vs	APPELLANT
State of Gujarat and Another		RESPONDENT

Date of Decision : 28-10-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 465, 466, 467, 471

Citation : (2009) 10 GUJ CK 0108

Hon'ble Judges : Akil Kureshi, J

Bench : Single Bench

Advocate : Patel, Nos. 1 - 2, for the Appellant; KP Rawal, APP for Respondent
No. 1 and YM Thakkar, for the Respondent

Judgement

Akil Kureshi, J.—The petitioners original accused seek quashing of complaint bearing C.R. No. I-85/2009 registered before Gujarat Town Police Station. It is the case of the petitioners that said complaint has been filed with mala fide intention to falsely implicate the petitioners and to use the complaint as a pressure lever against the petitioners.

2. The complainant is a Executive Magistrate. In the complaint in question he has stated inter-alia that he had recorded dying declaration of one Iqbal Ahmed Patel on 1.9.2004. The petitioners have filed several complaints against him with respect to recording of dying declaration on the ground that thumb impression was blurred and that therefore, the dying declaration was not acceptable. The complainant has further stated that he had discharged his duties but the petitioners have made wild allegations and by making false complaint tried to demoralize him. He further alleged that last year accused No. 1 i.e. present petitioner No. 1 had met him at Jaharpura Vegetable Market and threatened him that deceased Iqbal whose dying declaration the complainant had taken was his brother-in-law. Iqbal had been given seven sword blows but he (the complainant) will be given 27 blows. The Complainant further stated that

because of the said threat, he is unable to move around in Godhra Town freely. He is under constant fear. He had to change the school of his son. He therefore, requested that he may be given police protection. These in the nutshell are the allegations made in the complaint.

3. Learned advocate Mr. Patel for the petitioners submitted that the complaint on the very face of it does not inspire confidence and the complainant has tried to falsely implicate the petitioners. He submitted that the threat even according to the complainant was given nearly one year back for a incident which took place in the year 2004. The complaint was given within days of complaint being filed by one Mohammad Hanif on 26.2.2009 against the present complainant for offences punishable u/s 465, 466, 467 and 471 of the IPC. The said complaint alleges inter-alia that Executive Magistrate had obtained thumb impression of some other person instead of Iqbal Ahmed Patel whose dying declaration was recorded by the said Executive Magistrate.

4. On the other hand, learned APP Mr. Rawal opposed the petition and submitted that this is not a case where power of quashing should be exercised.

5. Learned advocate Mr. Yogesh Thakkar appearing for the complainant also strongly opposed the petition. He contended that the complaint discloses criminal offences and powers u/s 482 therefore, cannot be exercised. He submitted that repeated threats were being given to the complainant by the petitioners and that mere late filing of the complaint would not be a ground for quashing.

6. Having heard the learned advocates appearing for the parties, what emerges is admittedly a complaint was filed against the Executive Magistrate on 26.2.2009 by one Mohammad Hanif alleging inter-alia that Executive Magistrate had fabricated the thumb impression on the dying declaration of Iqbal Ahmed recorded on 1.9.2004. On 28.2.2009, the present complaint came to be lodged by the Executive Magistrate against the present petitioners.

7. The contents of the complaint are also quite significant. Apart from stating that he discharged his official duty while recorded dying declaration of Iqbal Ahmed on 1.9.2004, he further stated that if the thumb impression on the dying declaration was blurred, same is a technical matter. Despite this, he stated that petitioner No. 1, with respect to the said dying declaration, has been given frequent threats to him and last year petitioner No. 1 met him in the market and warned him that he will be given as many as 27 sword blows.

8. First and foremost reading the entire complaint as a whole, I find no allegation against petitioner No. 2 original accused No. 2. The allegation of having given threats are made only against petitioner No. 1. Secondly as per the complainant himself such threat was given more than one year back in the Vegetable Market. He took no steps to safeguard himself against any such threats. There is nothing on record to suggest that he either informed his department or alerted the police. Admittedly, from the complaint itself nothing happened for one year thereafter. There was no further trigger, therefore, for the complainant to lodge

the complaint in question suddenly and out of blue on 28.2.2009. No reason, no narration is available from the complaint why for nearly a year, no complaint was lodged and equally importantly why the same was filed on 28.2.2009. The allegations are also rather general in nature. They are directed only against petitioner No. 1 of firstly having given frequent threats and secondly of a particular incident both apparently prior to one year. Despite this, petitioner No. 2 is also joined as one of the accused. One cannot lose sight of the fact that the complaint in question followed closely after this very complainant was shown as an accused in complaint dated 26.2.2009 with respect to very same incident of recording of the dying declaration of Iqbal Ahmed. The complainant is not an illiterate, ignorant person, but in fact he happens to be a Government servant of considerable status. If the threat allegedly given by petitioner No. 1 sufficiently unnerved him, nothing is coming on record as to why he took no steps to protect himself against any untoward incident for nearly a year. If on the other hand, threat was a farce and to be completely ignored by person of some standing in society, nothing is brought on record as to how and why after one year the complainant felt deeply threatened and needed police protection.

9. All these factors put together would convince me that this is a case where criminal prosecution is being used for ulterior purpose and is thus clearly an abuse of process of Court. In case of State of Haryana and others Vs. Ch. Bhajan Lal and others, the Apex Court listed some of the grounds on which powers u/s 482 can be exercised. One of the ground mentioned in para. 108 is as follows:

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.

10. In view of the above discussion, I find that this complaint cannot be allowed to stand. Same is therefore, quashed. Rule is made absolute. Application stands disposed of accordingly.