

(2017) 01 GUJ CK 0070
In the Gujarat High Court
Case No : 411 of 2015

KINJALKUMAR PRADYUMANBHAI SHAH

APPELLANT

Vs

STATE OF GUJARAT & ORS.

RESPONDENT

Date of Decision : 13-01-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#) - Saving of inherent powers of High Court
[Indian Penal Code, 1860](#), [Section 420](#),
[Section 468](#), [Section 471](#), [Section 114](#), [Section 467](#), [Section 465](#), [Section 406](#), [Section 464](#) - 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 - Punishment for forgery - Punishment for Criminal breach of trust - Making a false document

Citation : (2017) 01 GUJ CK 0070

Hon'ble Judges : J.B.Pardiwala

Bench : Single Bench

Advocate : APURVA R KAPADIA, THAKORE

Final Decision : Allowed

Judgement

1. By this application under Section 482 of the Code of Criminal Procedure, 1973, the applicant-original accused No.8 seeks to invoke the inherent powers of this Court praying for quashing of the first information report being C.R. No.I-1 of 2014 registered with the Khambhat City Police Station for the offence punishable under sections 420, 406, 464, 465, 467, 468, 471 read with section 114 of the Indian Penal Code.

2. The case of the first informant may be summarized as under;

2.1 The land bearing Block No.95 was originally owned by one Diwaliben and her son Somabhai Parshottambhai. It is the case of the first informant that the

accused No.1 got executed a sale deed in his favour from Diwaliben on 01.05.2004 under the guise of creating a mortgage and, thereafter, the said Diwaliben and her son had to file the Civil Suit No.82 of 2007, wherein the compromise was arrived at and the sale transaction which was entered into between Diwaliben and her son and accused Nos.1 to 3 came to be cancelled. It is alleged in the FIR that, thereafter, the respondent No.2 herein purchased the land by a registered sale deed from the son of Diwaliben on 25.10.2011 and since then he is the owner and occupier of the land in question and has also taken the loan from the State Bank of India on the said land by creating mortgage. It is also alleged in the FIR that the accused Nos.1 to 3, in connivance with the officers of the State Government i.e. the accused Nos.12,13 and 14, got deleted the entry of obtaining of loan from the State Bank of India in the revenue record of 7x12 and accused Nos.1 to 3 have sold the land in favour of the accused Nos.4 to 6 by a registered sale deed dated 02.07.2013.

2.2 The role which attributed to the present applicant is to the effect that in the sale deed which was executed by the accused Nos. 1 to 3 in favour of the accused Nos.4 to 6, the petitioner has signed as an attesting witness.

3. Mr. Apurva Kapadia, the learned counsel appearing for the applicant, submits that even if the entire case of the prosecution is believed or accepted to be true, no case could be said to have been made out against his client. According to the learned counsel, the only role attributed to the applicant herein is that he is one of the attesting witnesses to the sale deed purported to have been executed by one Dahyabhai Dalpatbhai Parmar without any authority. He would submit that it is not even the case of the first informant that the signature of Dahyabhai, as the seller of the property in favour of the original accused Nos.4,5, and 6, is forged. He would submit that so far as the applicant is concerned, there being no case against him, the first information report be quashed.

4. On the other hand, this application has been vehemently opposed by Ms. Thakore, the learned APP appearing for the State.

5. I take notice of the fact that the respondent No.2-original first informant, although served with the rule issued by this Court, has chosen not to remain present before this Court and oppose this application either in person or through an advocate. I am informed that the first informant has settled the

dispute with all the other co-accused. Probably, this is the reason why he is no longer interested to appear before this Court in the present proceedings.

6. Ms. Thakore, the learned APP, would submit that a prima facie case is made out against the applicant herein. She would submit that before attesting the signature of the seller in the sale deed, the applicant should have been careful. To put it in other words, according to the learned APP, the attesting witness was supposed to inquire as regards the right, title and interest of the seller in the

property.

7. She would submit that there being no merit in this application, the same be rejected.

8. Having heard the learned counsel appearing for the parties and having considered the materials on record, the only question that falls for my consideration is whether the first information report should be quashed so far as the applicant herein is concerned.

9. On 19th February, 2015, the following order was passed;

"Mr. Apurva Kapadia, learned advocate appearing on behalf of the applicant states that the matter is settled between the original complainant and the main accused and they have entered into written consent agreement. The said consent agreement dated 06/03/2014 is produced on record.

On 13/01/2015, Notice was issued to respondent No.2. Though respondent No.2 is served, he has chosen not to appear before this Court or engage any lawyer.

Rule returnable on 06/04/2015. Mr. L. B. Dabhi, learned Additional Public Prosecutor waives service of Rule on behalf of respondent No.1.

Ad-interim relief in terms of Para-11(C) is granted. Direct service is permitted qua respondent No.2, be served through the concerned Police Station."

10 I am of the view that there is no case worth the name so far as the applicant is concerned. The only allegation levelled against the applicant herein is that he has put his signature as one of the attesting witnesses on the sale deed, which is in dispute. The case of the first informant is that Dahyabhai Dalpatbhai Parmar had no right, title or interest in the property and, therefore, he could not have executed the sale deed in favour of the original accused Nos.4,5 and 6.

11. If the authority of the seller, namely, Dahyabhai Dalpatbhai Parmar is in question, then the attesting witness in the sale deed has nothing to do with this. In such circumstances, putting the applicant herein to trial will be nothing but travesty of justice.

12. In the result, this application is allowed. The first information report being C.R. No.I-1 of 2014 registered with the Khambat City Police Station is hereby quashed. Rule is made absolute to the aforesaid extent.

Direct service is permitted.