

(2011) 09 GUJ CK 0091
In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 6305 of 2007

Labhuben Shankarbhai Patel and Another	APPELLANT
Vs	
State of Gujarat and Another	RESPONDENT

Date of Decision : 07-09-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 114, 406, 420, 465, 466

Citation : (2011) 09 GUJ CK 0091

Hon'ble Judges : M.R. Shah, J

Bench : Single Bench

Advocate : Ashish M. Dagli, for the Appellant; L.B. Dabhi, Assistant Public Prosecutor for Respondent 1 and P.S. Champaneri, for Respondents 2, for the Respondent

Judgement

M.R. Shah, J.—Present petition u/s 482 of the Code of Criminal Procedure has been preferred by the Petitioners - original accused persons to quash and set aside the impugned complaint being Criminal Inquiry Case No. 37 of 2006, pending in the court of learned Chief Judicial Magistrate, Surendranagar as well as to quash and set aside the impugned order passed by the learned Magistrate issuing process against the Petitioners for the offences punishable under Sections 406, 420, 465, 466, 467, 468 and 114 of Indian Penal Code.

2. That the Respondent No. 2 herein had purchased one Tenement from the Petitioners in the year 1999. It appears that there was some leakage in the said Tenement and therefore, the Respondent No. 2 initiated proceedings before the Consumer Forum and also filed a criminal complaint against the Petitioners. It appears that there was settlement between the parties before the Consumer Forum and the Petitioners paid a sum of Rs. 50,000/- to the Respondent No. 2 - original complainant. Consequently, not only the proceedings before the Consumer Forum but the criminal proceedings initiated by the Respondent No. 2 also came to be withdrawn.

3. It appears that thereafter, after a period of approximately six years, the impugned complaint came to be filed by the Respondent No. 2 - original complainant against the Petitioners for the offences punishable under Sections 406, 420, 465, 466, 467, 468 and 114 of Indian Penal Code, alleging inter-alia that Plans and some documents were not given to him. In the said complaint, which has been registered as Criminal Inquiry Case No. 37 of 2006, the learned Magistrate ordered to issue process against the Petitioners for the offences punishable under Sections 406, 420, 465, 466, 467, 468 and 114 of Indian Penal Code and hence the Petitioners - accused have preferred the present petition u/s 482 of the Code of Criminal Procedure.

4. Mr. Dagli, learned advocate appearing on behalf of the Petitioners - original accused has vehemently submitted that the Petitioners have not committed any offence as alleged. He has further submitted that earlier settlement was arrived at between the parties. He has further submitted that after a period of approximately six years from the date of settlement, the impugned complaint has been filed by the Respondent No. 2 - original complainant. He has further submitted that now even the Respondent No. 2 - original complainant has sold the Tenement in question to some other person and even settlement has been arrived at between the parties and some additional amount has also been paid by the Petitioners to the Respondent No. 2 - original accused. He has further submitted that now the compromise has been taken place between the Petitioners and Respondent No. 2 - original complainant and the same has been culminated in Compromise Deed dtd.29/4/2011, copy of which is produced on record, which is directed to be taken on record. He has further submitted that in view of the subsequent development, now the Respondent No. 2 - original complainant is not interested in proceeding further with the impugned criminal prosecution. Therefore, relying upon the decisions of the Hon'ble Supreme Court in the case of Madan Mohan Abbot Vs. State of Punjab, in the case of Nikhil Merchant v. Central Bureau of Investigation and Anr. reported in 2009 (1) GLH 31 as well as in the case of Manoj Sharma v. State and Ors. reported in 2009 (1) GLH 190, it is requested to exercise powers u/s 482 of the Code of Criminal Procedure and quash and set aside the impugned criminal proceedings.

5. Mr. Champaneri, learned advocate, appearing on behalf of the Respondent No. 2 - original complainant is not disputing the settlement between the Petitioners - original accused and Respondent No. 2 original complainant, which is culminated into in Settlement Deed dtd.29/4/2011, and copy of which is produced on record. He has also stated at the bar that Respondent No. 2 - original complainant has now sold the Tenement in question to some other person and he does not want to prosecute the Petitioners pursuant to the impugned complaint. He has also stated at the bar that the Respondent No. 2 - original complainant has no objection if the impugned complaint and the order issuing process are quashed and set aside.

6. Mr. L.B. Dabhi, learned Additional Public Prosecutor has requested to pass

appropriate order in view of the subsequent development and in the facts and circumstances of the case.

7. Heard the learned advocates appearing on behalf of the respective parties at length.

8. At the outset, it is required to be noted that process has been issued against the Petitioners - original accused for the offences punishable under Sections 406, 420, 465, 466, 467, 468 and 114 of Indian Penal Code and the allegations against the Petitioners is non-supply of Plans and some documents with respect to Tenement in question, which is admittedly now sold by the Respondent No. 2 - original complainant. Apart from the fact that earlier there was a settlement with respect to the very property in question and the original complainant was paid a sum of Rs. 50,000/- and the original complainant had withdrawn the proceedings from the Consumer Forum and also the criminal proceedings, after a period of about six years from the date of the settlement, the present complaint has been filed by the Respondent No. 2 - original complainant and now again there is settlement between the Petitioners - original accused and the Respondent No. 2 - original complainant, and same has been culminated in Compromise Deed dtd.29/4/2011. Under the circumstances, the Respondent No. 2 - original complainant has agreed to withdraw the criminal proceedings initiated against the Petitioners and he is not interested in proceeding further with the criminal proceedings and he has no objection if the petition is allowed and the impugned complaint and criminal proceedings are quashed and set aside.

9. In view of the above and considering the decisions of the Hon'ble Supreme Court in the cases of Madan Mohan Abbot (supra), Nikhil Merchant (supra) and Manoj Sharma (supra), and considering the fact that the dispute between the parties seems to be of private nature, it appears that this is a fit case to exercise powers u/s 482 of the Code of Criminal Procedure and to quash and set aside the criminal proceedings as to continue the criminal proceedings would be unnecessary harassment to the parties and the same shall be abuse of process of law. It appears that in view of the stand taken by the Respondent No. 2 - original complainant now, there are blink chances of conviction of the Petitioners - original accused.

10. Under the circumstances and for the reasons stated above, present petition succeeds. The impugned complaint being Criminal Case No. 37 of 2006, lodged by the Respondent No. 2 - original complainant, pending in the court of learned Chief Judicial Magistrate, Surendranagar as well as the impugned order passed by the learned Chief Judicial Magistrate, Surendranagar in the impugned complaint being Criminal Inquiry Case No. 37 of 2006 ordering to issue process against the Petitioners for the offences punishable under Sections 406, 420, 465, 466, 467, 468 and 114 of Indian Penal Code, are hereby quashed and set aside. Rule is made absolute to the aforesaid extent.