

(2020) 08 GUJ CK 0172

In the Gujarat High Court

Case No : R/Criminal Misc. Application No. 8781 Of 2020

Mukeshbhai Ramanbhai Vasava

APPELLANT

Vs

State Of Gujarat & 1 Other(s)

RESPONDENT

Date of Decision : 14-08-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 482
Gujarat Prohibition Act, 1949 — Section 65(A)(A), 81, 98(2)
Indian Penal Code, 1860 — Section 188
Evidence Act, 1872 — Section 25

Citation : (2020) 08 GUJ CK 0172

Hon'ble Judges : Dr A. P. Thaker, J

Bench : Single Bench

Advocate : Y J Patel, Maithili Mehta

Final Decision : Allowed

Judgement

Dr. A. P. Thaker, J

1. Heard Mr.Y. J. Patel, learned advocate for the petitioner and Ms.Maithili Mehta, learned Additional Public Prosecutor for the respondent â?" State

through Video Conferencing.

2. RULE. Ms.Mehta, learned Additional Public Prosecutor waives service of notice of rule for respondent â?" State. With the consent of learned

advocates for both the sides, rule is fixed forthwith.

3. The petitioner has filed the present petition under Section 482 of the Criminal Procedure Code for quashing and setting aside the FIR being

C.R.No.11196004200969 of 2020 registered with Gotri Police Station, District: Vadodara City for the offences under Sections 65(A)(A), 98(2) and 81

of the Gujarat Prohibition Act and Section 188 of the Indian Penal Code qua the

present petitioner as well as all consequential proceedings thereof.

4. Mr.Patel, learned advocate for the petitioner has vehemently submitted that the FIR being C.R.No.11196004200969 of 2020 has been registered

with Gotri Police Station, District: Vadodara City for the offences under Sections 65(A)(A), 98(2) and 81 of the Gujarat Prohibition Act and Section

188 of the Indian Penal Code. According to him, the allegation against the petitioner is that on 30.05.2020, during the patrolling of the area, as per the

instruction given by the Higher Officer, there was checking of the vehicles and it was found that accused No.1 was driving the car from city area to

Ankodiya area and on suspicion, one police officer has stopped the car which came to be driven by accused No.1 and upon inquiry made by the police

officer, it was found liquor in the bags. It is submitted by learned advocate for the petitioner that necessary panchnama was drawn at the place of

incident and eight bottles of liquor was found amounting to Rs.2400/- which came to be seized by the Investigating Officer and also seized the four

wheeler vehicle.

4.1 Mr.Patel, learned advocate for the petitioner has submitted the present petitioner has been shown as an accused only on the basis of the statement

of the co- accused and the same is inadmissible under Section 25 of the Indian Evidence Act. He has submitted that the presence of the petitioner at

the place of the incident is not established and except the statement of the co-accused, there was no material against the present petitioner for

prosecuting him. While relying upon the decision in the case of Suresh Chhotalal Verma Vs. State of Gujarat, (2001) 2 GLR 1029 ,he has urged to

allow the present petition.

4.2 Mr.Patel, learned advocate for the petitioner has further submitted that as per the allegation made in the complaint, the person who was caught

with the liquor has informed the police that he has purchased the liquor from the present petitioner and taken mobile number of the petitioner.

According to him, there is no evidence against the present petitioner for the alleged offence and he has been implicated only from the statement of the

co-accused. He has prayed to allow the present petition and quash and set aside the impugned FIR.

5. Per contra, Ms.Mehta, learned Additional Public Prosecutor for the respondent â?" State has submitted that considering the materials placed on

record, the present petition may not be entertained. She has submitted that in view of the order dated 27.07.2020 passed by this Court, she has

received the instructions from the concerned Investigation Officer that except, the statement of the co-accused, there is no other materials to connect

the present petitioner with the alleged crime. She has submitted that as suggested by this Court for placing the report regarding call details and the

whatsapp messages which may have been exchanged between the petitioner and the person from whom the liquor is seized and the mobile number

given in the FIR, no such data is collected by the police authority. She has prayed to dismiss the present petition.

6. It is settled law that for considering the petition under Section 482 of the Code, it is necessary to consider as to whether the allegations in the

complaint prima facie make out a case or not and the Court is not to scrutinize the allegations for the purpose of deciding whether such allegations are

likely to be upheld in trial. It is also well settled that though the High Court possesses inherent powers under Section 482 of the Code, these powers

are meant to do real and substantial justice, for the administration of which alone it exists or to prevent abuse of the process of the court. The

Supreme Court, time and again, has observed that extraordinary power should be exercised sparingly and with great care and caution. The High Court

would be justified in exercising the said power when it is imperative to exercise the same in order to prevent injustice.

7. The High Court, in the exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure, is required to examine whether the

averments in the complaint constitute the ingredients necessary for an offence alleged under the Penal Code. If the averments taken on their face do

not constitute the ingredients necessary for the offence, the criminal proceedings may be quashed under Section 482. A criminal proceeding can be

quashed where the allegations made in the complaint do not disclose the commission of an offence under the Penal Code. The complaint must be

examined as a whole, without evaluating the merits of the allegations. Though the law does not require that the complaint reproduce the legal

ingredients of the offence verbatim, the complaint must contain the basic facts necessary for making out an offence under the Penal Code.

8. A court exercising its inherent jurisdiction must examine if on their face, the averments made in the complaint constitute the ingredients necessary

for the offence.

9. Now, on perusal of the decision in the case of Suresh Chhotalal Verma (supra), more particularly the observation made in para-5 needs to be reproduced hereinbelow.

â??5..... If this is the law then the statement of co-accused during the investigation is neither prima facie evidence for the purpose of evidence whatsoever nor it can be said to be material on which co-accused can be proceeded with. Of course, if there would have been some other material on which revisionist could be proceeded with, the learned Special Judge could have been said to have been justified in rejecting the application but simply on the strength of the statement of the co-accused recorded by the investigating agency under Section 161 of the Cr.P.C., it cannot be said to be a material sufficient for proceeding against the revisionist.....â??

10. It is pertinent to note that the legal bar under Section 25 of the Indian Evidence Act that a statement of a co-accused is not admissible in evidence and, therefore, cannot be relied on, cannot be construed to mean that such statement cannot be even considered or treated as a clue or a piece of information to initiate and conduct inquiry / investigation or to direct the investigation / inquiry in a particular direction. Such a statement can be treated as a clue or piece of information and not evidence for initiating and conducting investigation / inquiry so as to find out as to whether there is any independent, satisfactory and reliable material which may support or justify or provide reason for continuing inquiry / investigation for initiating further investigation. Thus, the rule is well settled that the person facing charge of any offence can be proceeded with if there is other material available on record in addition to the statement of the co-accused. The statement of the co-accused can be used as clue for implicating the person concerned as an accused. However, at the same time, there must be some other materials on record.

11. Now, considering the materials placed on record, the admitted fact is that the present petitioner has been arraigned as an accused only on the basis of the statement of the co-accused. It is an admitted fact that except, the statement of the co-accused, there is no material against the petitioner to connect him with the alleged crime. It is also admitted by the prosecution that there is no documentary evidence regarding call details between the

accused No.1 and the present petitioner on mobile phone of the petitioner which has been provided by the co-accused to the complainant, which came to be reflected in the FIR itself. Thus, in the present case, the continuation of the proceedings against the petitioner is nothing but abuse of process of law and it will be futile exercise. Therefore, in view of the aforesaid legal preposition and the materials placed on record, considering the peculiar facts of the case, this Court is of the considered opinion that the present petition qua the present petitioner is required to be allowed.

12. In the result, the petition is allowed. The FIR being C.R.No.11196004200969 of 2020 registered with Gotri Police Station, District: Vadodara City for the offences under Sections 65(A)(A), 98(2) and 81 of the Gujarat Prohibition Act and Section 188 of the Indian Penal Code as well as all consequential proceedings thereof are hereby quashed and set aside qua the present petitioner. The criminal proceedings may continue so far as other accused is concerned. Rule is made absolute to the aforesaid extent.

13. Registry is directed to intimate about this order to the concerned authorities through fax, email and/or any other suitable electronic mode.