

(2016) 12 GUJ CK 0028

In the Gujarat High Court

Case No : Criminal Misc. Application (For Quashing & Set Aside Fir/order) No. 7047 of 2015

Priyankaben Shaileshkumar Bhisra

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 20-12-2016

Acts Referred:

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

Citation : (2017) 1 NIJ 544

Hon'ble Judges : Mr J.B. Pardiwala, J.

Bench : Single Bench

Advocate : Mr Hardik H. Dave, Advocate, for the Applicants No. 1; Mr. Valimohammed Pathan and Mr. Soeb R. Bhocharia, Advocates, for the Respondent No. 2; Ms. Thakore, Addl. Public Prosecutor, for the Respondent No. 1

Final Decision : Allowed

Judgement

Mr. J.B. Pardiwala, J. (Oral)—Rule returnable forthwith. Ms. Thakore, the learned APP, waives service of notice of rule for and on behalf of the respondent No.1-State. Mr. Vali Mohammed Pathan, the learned advocate, waives service of notice of rule for and on behalf of the respondent No.2-original first informant.

2. By this application under section 482 of the Code of Criminal Procedure, 1973, the applicant-original accused No.2 seeks to invoke the inherent powers of this Court praying for quashing of the first information report numbered as C.R. No. I-12 of 2014 registered with the D.C.B. Police Station, District: Rajkot for the offence punishable under sections 406, 420 read with section 114 of the Indian Penal Code.

3. The case of the respondent No.2 may be summarized as under;

4. The husband of the applicant herein, namely, Shaileshkumar Patel is alleged to have entered into a partnership with the first informant. The allegations are that

Shaileshkumar Patel lured the first informant to invest a huge amount in the business with an understanding that the amount shall be repaid to the first informant. It is the case of the respondent No.2 that the entire investment was done by him. At the time when such understanding was arrived at, the applicant and her husband had also issued cheques of the like amount towards the security. It is alleged that the husband of the applicant herein failed to repay the amount invested by the first informant and the cheques, which were issued by the husband of the applicant including the applicant, were dishonoured, for which, complaint under section 138 of the N.I. Act has been filed and those proceedings are going on before the court concerned. It also appears that the first informant has filed a Summary Suit No.39 of 2015 for recovery of Rs.2,70,00,000/- in the court of the learned Principal Senior Civil Judge, Rajkot. Those proceedings are also going on in the court.

5. The only allegation against the applicant herein, being the wife of Shailesh, is that she used to attend the office and do some office work.

6. It is not the case of the first informant that there was any direct talk with the applicant herein or the applicant herein had also made a false representation, on which, the respondent No.2 acted upon.

7. 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 proceedings should continue against the applicant herein. I take notice of the fact that for the offence alleged to have been committed in June, 2013, the first information report came to be lodged on 20th March, 2015. The first informant has already initiated the proceedings under section 138 of the N.I. Act and has also filed a summary suit for recovery of the amount. I do not find anything from the first information report or the other materials on record, on the basis of which, it could be said that the applicant herein committed any offence of the criminal breach of trust or cheating. Even, otherwise, both the sections cannot be invoked together. The first informant should be clear whether his case is one of the criminal breach of trust or cheating.

8. In view of the above, this application is allowed. The first information report being C.R. No.I-12 of 2014 registered with the D.C.B. Police Station, Rajkot is hereby ordered to be quashed so far as the applicant is concerned. The investigation shall proceed further in accordance with law, if not completed, so far as the main accused is concerned, i.e. Shaileshkumar Patel. None of the observations made by this Court in this order shall have any bearing so far as the proceedings under section 138 of the N.I. Act are concerned including the summary suit, which has been filed in the civil court. Both those proceedings shall be considered on their own merits on the basis of the evidence that may be led by the parties. Rule is made absolute to the aforesaid extent.

9. Direct service is permitted.