
(2006) 01 GUJ CK 0046
In the Gujarat High Court

Case No : Criminal Misc.Application No's. 13496 and 13499 of 2005

Sailesh Natvarlal Patel and Another

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 30-01-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2006) 01 GUJ CK 0046

Hon'ble Judges : P.B. Majmudar, J

Bench : Single Bench

Advocate : AR Gupta, for the Appellant; Manisha Shah, APP, for the Respondent

Final Decision : Dismissed

Judgement

P.B. Majmudar, J.—The applicants, who, alleged to have conspired in a matter of large scale fraud, have approached this Court by invoking extraordinary jurisdiction of this Court u/s 482 of the Criminal Procedure Code for quashing the police investigation. Respondent No. 2 herein has filed a complaint being Crime Register No. 26/2005 with Economic Crime Cell, Gandhinagar, Zone-I, against the applicants and others, stating that the complainant is doing business as a commission agent and dealing in agricultural produce. It is alleged in the complaint that on 11th July 2005, one Dahyabhai Bhikhabhai Patel, who is dealing in the name of Dahyabhai Bhikhabhai and Company as a commission agent met the complainant and told him that he has obtained an order for supplying Raydo? on large scale to one Rajesh Mehta and Company and, therefore, he requested that he may be given goods on credit. Thereupon, the complainant told him that unless his brother-in-law - Baldevbhai Ganeshbhai accept the responsibility of payment, he will not give the goods on credit. Said Dahyabhai Bhikhabhai Patel informed the complainant that his brother-in-law is willing to give such guarantee on behalf of him. Thereafter, said Dahyabhai Bhikhabhai Patel came with Baldevbhai at about 3 O" Clock on the same date to the complainant and Baldevbhai promised that if the complainant gives Raydo?

on credit to Dahyabhai, and if Dahyabhai does not pay the money, he will make such payment. On such assurance, the complainant parted with 3899 sacks of Raydo amounting to Rs. 55,18,361/- to said Dahyabhai between 11-7-2005 to 27-7-2005, which was transported in 26 trucks. Subsequently, said Dahyabhai sent two cheques of Rs. 3 Lacs each, amounting to Rs. 6 Lacs through one Govindbhai Rambhai Patel and certain other payments were also made as averred in the complaint. Thereafter, said Dahyabhai fled away on 27-7-2005 by closing his shop from Mehsana Market Yard. On the next day, the complainant approached Baldevbhai and requested him to make necessary payment. At that time he was informed by said Baldevbhai that in view of heavy rainfall in Mumbai computers of the banks are hanged and, therefore, it is not possible to get the amount transferred from the bank, however, said Baldevbhai gave Rs.1,40,000/- in cash to the complainant and thereafter, no payment was made. Subsequently, said Baldevbhai gave in security two houses of his brother-in-law Govindbhai Rambhai Patel, for which he has also executed power of attorney in favour of the uncle of the complainant - Shri Jitendra Shah. Subsequently, on 6-8-2005, Baldevbhai also executed a document in writing promising the complainant that he will pay the remaining amount. As per the allegations, at the time of transaction with Dahyabhai, his nephew one Shailesh and Govind Rambhai Patel were also present and they started transferring the Raydo in motor trucks and they sent it to Visnagar godown. The complainant subsequently found out that the goods in question, i.e. Raydo? was sold to Rajesh Mehta and Company at a very low price and said Raydo is kept in a godown of APMC, which is taken on lease by ICICI Bank and the accused has taken loan on it. It is also alleged in the complaint that Dahyabhai Bhikhabhai Patel is absconding. On this and other such allegations, aforesaid complaint is filed and it is alleged that the accused had defrauded the complainant to the extent of Rs. 46,78,361/- and there is a conspiracy on the part of all the accused in connection with the said transaction. At the stage of police investigation, the applicants have approached this Court for quashing the complaint.

2. Mr. Gupta, learned advocate for the applicants submitted that so far as the applicants of Criminal Misc. Application No. 13496/2005 are concerned, they have not played any role in cheating and the alleged act of cheating is committed by one Dahyabhai for which the applicants cannot be held responsible. Mr.Gupta further submitted that in any case the dispute in question is of civil nature and, therefore, this Court must quash the complaint from its very inception. To substantiate his say, Mr.Gupta has relied upon following judgements.

i. Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others,

ii. Ramesh and Others Vs. State of Tamil Nadu,

3. On the other hand, Ms. Manisha Shah, learned APP submitted that today investigating officer is present before this Court and as per the instructions received from him, investigation is at large. She submitted that this is a case of

large scale scandal as other 14 agriculturists have also approached the investigating authority by filing similar complaints. She further submitted that modus operandi of the accused is similar in all such cases and they have cheated and duped many innocent and poor agriculturists. It is submitted by her that the complainant was subjected to threat by the accused for which the complainant has filed another complaint on 12-12-2005. It is submitted by her that the main accused is still absconding, who is closely related with the applicants. It is also submitted by her that in view of the fact that main accused is absconding investigation could not be completed. It is submitted by her that during investigation, which has taken place so far, it is noticed that there is a large scale scandal in which, prima facie, the applicants are involved. She further submitted that in the facts and circumstances of the case, this is not a case in which police investigation can be intercepted and complaint can be quashed. She submitted that though the Sessions Court has granted bail in favour of the applicants, the State is considering to file appropriate application for cancellation of bail as the main accused is absconding as well as even after granting of bail, complainant was subjected to threat by the accused. She also submitted that from investigation papers it is clear that the goods in question is pledged with ICICI Bank and one of the accused Mr. Baldevbhai is a guarantor for the same. It is also submitted that said Baldevbhai executed power of attorney in favour of the complainant and also gave security of the property, which belonged to Govindbhai Patel, who is one of the accused in F.I.R. It is submitted by her that in view of the above factual background it is clear that all the accused are involved in the alleged offence and there is a conspiracy by all the accused in the matter of committing fraud and cheating.

4. Mr. Gupta is not in a position to substantiate his argument that the averments made in the complaint are absolutely false and the applicants are innocent.

5. There are serious allegations in F.I.R. and as pointed out by learned APP there is a likelihood that the applicants herein may be held responsible for a large scale scandal. In my view, powers of this Court u/s 482 of the Criminal Procedure Code are not meant for assisting such type of accused persons against whom there are serious allegations in the complaint, more so, when the matter is at police investigation stage.

6. Mr. Gupta submitted that he is not aware as to whether main accused Dahyabhai is still absconding but according to him, he is informed by his client Baldevbhai (applicant of Criminal Misc. Application No. 13499/2005) that said Dahyabhai has informed his client that he (Dahyabhai) will remain present before the investigating officer on 6th February, 2006.

7. Be that as it may, it is not in dispute that main accused is still absconding. It is submitted by learned APP that investigation is still going on and according to her there is prima facie evidence to suggest that all the accused are conspirators. She further submitted that it is a matter of large scale fraud wherein many other agriculturists of the town have also been defrauded by the present applicants.

8. Considering the facts and circumstances of the case, in my view, this is not a case for quashing the complaint at police investigation stage. At the time of deciding matter u/s 482 of the Criminal Procedure Code and that too for quashing police investigation, this Court is not expected to carry out rigorous inquiry to find out the role of the accused in connection with the allegations made in the F.I.R. However, Mr. Gupta submitted that the Court should consider all necessary documents including each and every paper of police investigation to find out whether there is any prima facie case against the applicants. In my view, such recourse is not permissible, in the facts of the present case and it is not necessary to intercept the police investigation by examining each and every document which investigating officer might have collected during investigation. The police investigation is not required to be set at naught by exercising powers u/s 482 of the Criminal Procedure Code at this stage. It is true that this Court has got very wide powers u/s 482 of the Criminal Procedure Code but that does not mean that in each and every case the Court is required to make rigorous inquiry to find out whether the accused is guilty or not. This Court is not required to conduct a trial, which the Magistrate or the Sessions Judge is required to do. In my view, looking to the averments made in the complaint, prima facie, it cannot be said that the applicants are not involved in the commission of the offence as alleged against them in the F.I.R. In that view of the matter, police investigation is not required to be intercepted at this stage and the investigating officer cannot be prevented from carrying out his statutory duty of investigation, which is to be done in an objective and impartial manner.

9. Investigating officer, Mr. J.M. Chaudhary, is present before the Court and he has informed learned APP, Ms. Shah that initially investigation was carried out by one Mr. J.R. Khuti and the fact that so many other agriculturists have filed complaints against the accused has not been brought to the notice of the concerned Court by said Mr. Khuti. He also stated that fact that complainant was subjected to threat was also not pointed out to the concerned Court at the time when bail was granted. Unfortunately, the order granting bail produced on record is also a cryptic one, where the learned Judge has not given any reasons.

10. Ms. Shah, learned APP has submitted that at the time of granting bail no reasons are given by the Sessions Court to indicate as to what has weighed with the Court at the time of granting bail, even when the main accused is absconding. However, this Court is not required to consider this aspect in the present proceedings. If the State is aggrieved by the order of granting bail to the accused, it is always open to the State to file appropriate application for cancellation of bail. Simply because the bail is granted is no ground for quashing F.I.R., as the scope of both the proceedings are entirely different.

11. It is required to be noted that even though the powers u/s 482 of the Criminal Procedure Code are very wide, such powers are required to be exercised in a careful manner and police investigation is required to be quashed only in the rarest of rare case. The Apex Court in *Zandu Pharmaceutical Works Ltd. and*

Others Vs. Md. Sharaful Haque and Others, , has observed that, while exercising powers u/s 482 of the Criminal Procedure Code, Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the court and issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. S

12. Considering the aforesaid observations of the Supreme Court, and when the investigation is going on and as pointed out by learned APP when there is prima facie evidence against the accused for investigating the case, in my view, this is not a case in which extraordinary powers of this Court are required to be exercised for quashing police investigation.

13. At this stage, Mr.Gupta has submitted that even while exercising powers for quashing FIR, the Court should look into each and every paper forming part of police investigation, however, in my view, such procedure cannot be adopted by this Court and the facts of this case also do not justify such exercise. It is required to be noted that quashing of F.I.R. stands on different footing than quashing of proceedings pending before the Court after issuance of process as after completion of investigation when the charge sheet is filed, appropriate material is available on record to find out whether there is any justification in quashing the proceedings pending before the Court. So far as police investigation is concerned, the matter is at liquid stage as evidence is required to be collected by police. Therefore, at the stage of police investigation, it would be hazardous to quash the complaint unless a strong case is made out for the same. None of such eventuality is present in the present case and this is not a case in which the police has no jurisdiction to investigate the case or that by reading the complaint it can be said that no case is made out against the accused. After investigation is over and if the police finds that there is no case against the applicants, naturally, appropriate report can be filed by police in this behalf. On completion of investigation if charge sheet is filed by the police, there is a remedy available to the accused either to apply for discharge or to file a substantive petition calling in question the proceedings pending before the Court by annexing all relevant documents. Therefore, when investigation is going on it would be hazardous to quash the police investigation as the picture about involvement or otherwise of the accused is not clear. It is a well settled position of law that unless rarest of rare case is made out the Court would not quash the police investigation and as stated earlier, this is not a case in which this Court would like to quash the police investigation, especially when the main accused is not traceable since long.

14. In my view, this is not a case in which police should be prevented from carrying out its statutory duty and it is always presumed that the police will carry out investigation in objective, honest and impartial manner. In view of what is

stated herein above, I do not find any substance in these applications and this is not a case in which police investigation can be intercepted by this Court at this stage. Police is directed to carry out the investigation expeditiously and in an objective manner. It is clarified that on the facts of the case, wider observations are made by this Court as learned APP has gone through police papers in view of the request of Mr. Gupta that Court may try to find out whether any role of the applicants is established apart from FIR. It is also clarified that if the prosecution agency is of the opinion that earlier investigating officer has not pointed out certain facts before the Court at the time of hearing of bail application, State may take appropriate action in accordance with law for finding out the reasons for such non-disclosure by the earlier investigating officer.

15. In view what is stated herein above, both these applications are rejected.