

(2024) 10 GUJ CK 0023

In the Gujarat High Court

Case No : Special Criminal Application (Quashing) No.15793 of 2023, Criminal Miscellaneous Application (For Stay) No. 1 of 2024

Siddharth Ajitsinh Jhala Versus

APPELLANT

Vs

State Of Gujarat & Anr.

RESPONDENT

Date of Decision : 07-10-2024

Acts Referred:

Indian Penal Code, 1860 — Section 114, 120B, 173, 186, 262, 263, 332, 380, 420, 467, 471, 504

Code of Criminal Procedure, 1973 — Section 2(d), 195, 195(1)(b)

Citation : (2024) 10 GUJ CK 0023

Hon'ble Judges : Nirzar S. Desai, J

Bench : Single Bench

Advocate : Ashish M Dagli, Manan Mehta

Final Decision : Allowed

Judgement

Nirzar S. Desai, J

1. Rule. Learned APP waives service of rule on behalf of respondents. With the consent of learned advocates for the respective parties, the matter is taken up for final disposal today itself.

2. By way of this petition, the petitioner has prayed for quashing and setting aside FIR No.11208044230955 of 2023 registered with Pradyuman Nagar Police Station, Rajkot for the offences punishable under Section 173 and 186 of the Indian Penal Code.

3. As per the FIR, when ASI Suresh Nathubhai Rathod went to serve the summons to the petitioner, he refused to accept the same and created obstacles in performing the duty of a Government servant and, therefore, the FIR is registered.

4. According to learned advocate Mr. Dagli, for such an offence, FIR ought not to have been registered and complaint to the concerned Magistrate was required to

be filed. He also relied upon the decisions of the coordinate Bench of this Court in the case of Bharatbhai Ratilal Deliwala v. State of Gujarat rendered in Criminal Misc. Application No.12326 of 2015 dated 20.8.2015, Shivabhai Kamabhai Thakor v. State of Gujarat rendered in Criminal Misc. Application No.9854 of 2020 dated 2.11.2020, Rashminbhai Vadilal Shah v. State of Gujarat rendered in Criminal Misc. Application No.34870 of 2016 dated 21.12.2018 and in the case of Dulabhai Muljibhai Borde v. State of Gujarat rendered in Criminal Misc. Application No.8243 of 2014 dated 28.11.2018. By relying upon the aforesaid decisions, Mr. Dagli submitted that in view of the fact that now the charge-sheet is filed, cognizance of the offence under Section 173 and 186 of the Indian Penal Code is taken by the concerned Court which is not permissible in view of language of Section 195 of the Code of Criminal Procedure, 1973 and instead a complaint in writing before the concerned Magistrate was required to be filed. In the instant case, without there being any complaint on the basis of registration of FIR, the cognizance is taken and, therefore, the case of the petitioner is squarely covered by the above referred judgments.

5. In the above referred decisions, the coordinate Benches of this Court have taken a view that in view of the allegations regarding Section 186 of the Indian Penal Code, the Police ought not to have taken cognizance of the offence and the only recourse was open to file a complaint under Section 195 of the Code of Criminal Procedure, 1973 and, therefore, registration of the FIR and taking cognizance for offence punishable under Section 186 of the Indian Penal Code was not in consonance with the provisions of law and, therefore, the proceedings are required to be quashed and set aside.

6. Mr. Manan Mehta, learned Additional Public Prosecutor opposed the petition. However, he could not point out any decision contrary to the decisions relied upon by learned advocate Mr. Dagli which are referred above.

7. The coordinate Bench of this Court in the case of Bharatbhai Ratilal Deliwala v. State of Gujarat rendered in Criminal Misc. Application No.12326 of 2015 dated 20.8.2015 in paragraphs 6 to 10 observed as under :-

"6. Thus, although the FIR has been lodged by a public servant yet no cognizance could have been taken by the trial Court upon such police report in view of the specific bar under Section-195 of the Code.

7. Mr. Pandya, the learned APP contends that the Magistrate could not have been taken cognizance for the offence under section-186 of the IPC, but so far as the other offence are concerned i.e. Sections-332 and 504 of the IPC, the cognizance would not be rendered bar upon the police report.

8. I am afraid, I am unable to agree with the submissions of the learned APP. In the cases where in the course of the same transaction, an offence for which no complaint by the Court is necessary under Section195(1)(b) of the Code and an offence for which a complaint of Court or a complaint as stated in Section-195 is necessary under that subsequent, are committed. It is not permissible to spell-

up and hold that the prosecution of the accused for offence not mentioned in the Section-195 should be upheld. In the present case also, it is not possible to spell-up the consequences of the IPC and take the view that it was permissible for the Magistrate to take cognizance of the offence under Section-332 and 504 of the IPC.

9. I may quote with profit the decision of the Supreme Court in the case of "State of U.P. v. Suresh Chandra Srivastava" reported in AIR 1984 SC 1108. I may quote the observations made by the Supreme Court in para-5 and 6 thus:-

"5. The High Court held that the offences under Sections 467, 471 and 120B, I.P.C. even if made out could, not be taken cognizance of by the trial court without a complaint under S.195 of the Code. A perusal of the facts shows that there is not even a hint regarding forging any document or using a forged document. Taking the complaint at its face value, at the most, the cases against the accused would fall within the ambit of Sections 262, 263, 380 and 420, I.P.C. which do not require a complaint under Section 195. The fact that some persons aided and abetted the detaching of the used stamps from the old files and reusing them in the other cases does not involve any process of forgery or use of a forged document.

6. In these circumstances, therefore, it is not necessary for us to go into the broader question as to whether if offences under Sections 467, 471 and 120-B, I.P.C. are committed, the complaint could proceed or not. The law is now well settled that where an accused commits some offences which are separate and distinct from those contained in Section 195, Section 195 will affect only, the offences mentioned therein unless such offences form an integral part so as to amount to offences committed as a part of the same transaction, in which case the other offences also, would fall within the ambit of S.195 of, the Code."

10. In view of the above, this application is allowed. The proceedings of the Criminal Case No.590 of 1999 pending in the Court of the learned Judicial Magistrate First Class, Limbdi arising from the F.I.R. being C.R. No.II-43 of 1999 registered with the Limbdi Police Station, Surendranagar, are hereby ordered to be quashed."

8. The coordinate Bench of this Court in the case of Rashminbhai Vadilal Shah v. State of Gujarat rendered in Criminal Misc. Application No.34870 of 2016 dated 21.12.2018, in paragraphs 8 and 9 observed as under :-

"8.0 Thus, as per the law enunciated by this Court in the aforesaid judgment, though there is no bar against the Investigating Officer from investigating the allegations made in the said FIR, but in case the said FIR culminates into the chargesheet, the concerned Court would not be able to take cognizance of the offence under Section 186 of IPC, the complaint for the said cognizable offence having not been filed in terms of the definition of the 'complaint' contained in Section 2(d) of the Cr.P.C. Hence, in the opinion of the Court, no useful purpose would be served in permitting the investigating officer to continue with the

investigation on the basis of the FIR which cannot be treated as the "complaint" in the facts and circumstances of the case.

9.0 In the considered opinion of this Court, the issue involved in the present petition is squarely covered by the judgment dated 28.11.2018, passed in Criminal Misc. Application No.8243 of 2014 and impugned FIR being No.C.R.No.II-343/2016 registered before Kalupur Police Station, Ahmedabad under Section 186 and 114 of the Indian Penal Code is quashed and set aside. However, it is clarified that it will be open for the concerned public servant, the complainant, to file the complaint in accordance with law in respect of the allegations made in the FIR in question, and that in the event of filing such complaint, it shall be open for the concerned Court to deal with the same in accordance with law."

9. The coordinate Bench of this Court in the case of Dulabhai Muljibhai Borde v. State of Gujarat rendered in Criminal Misc. Application No.8243 of 2014 dated 28.11.2018, in paragraphs 5 and 6 observed as under :-

"5. From the bare reading of the said definition, it is discernible that the complaint would not include Police Report however a report made by a Police Officer disclosing the commission of a non-cognizable offence shall be deemed to be complaint. In the instant case, the offence under Section 186 of IPC having been made cognizable by the State Government, the Police Report in case of cognizable offence could not be treated as the complaint as per the definition contained in Section 2(d) of Cr.P.C. The FIR in question therefore filed before the Police Station, Surat City for the offences under Sections 186 and 114 of IPC, could not be treated as the complaint for the purposes of Section 195 of Cr.P.C. Of course, there is no bar against the Investigating Officer from investigating the allegations made in the said FIR but in case the said FIR culminates into the charge-sheet, the concerned Court would not be able to take cognizance of the offence under Section 186 of IPC, the complaint for the said cognizable offence having not been filed in terms of the definition of the 'complaint' contained in Section 2(d) of the Code. Hence, in the opinion of the Court, no useful purpose would be served in permitting the investigating officer to continue with the investigation on the basis of the FIR which cannot be treated as the "complaint" in the facts and circumstances of the case.

6. In that view of the matter, the FIR being No. C.R. No. II 383 of 2014 is quashed and set aside. However, it is clarified that it will be open for the concerned public servant, the complainant, to file the complaint in accordance with law in respect of the allegations made in the FIR in question, and that in the event of filing such complaint, it shall be open for the concerned Court to deal with the same in accordance with law."

10. Considering the fact that the aforesaid observations made by the coordinate Benches in similar situation are squarely applicable to the facts of the present case, the present petition is required to be allowed. Accordingly, the present

petition stands allowed. The impugned FIR No.11208044230955 of 2023 registered with Pradyuman Nagar Police Station, Rajkot is quashed and set aside qua the applicant. Rule is made absolute to the above extent.

In view of disposal of main matter, connected application also stands disposed of.