

(2017) 03 GUJ CK 0065
In the Gujarat High Court
Case No : 136 of 2008

STATE OF GUJARAT

APPELLANT

Vs

RAJIV MADHUKANT SUTTARIA

RESPONDENT

Date of Decision : 15-03-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 397](#), [Section 401](#) - Calling for records to exercise powers of revision - High Courts powers of revision
[Indian Penal Code, 1860](#), [Section 420](#), [Section 304](#), [Section 418](#), [Section 120\(b\)](#) - Cheating and dishonestly inducing delivery of property - Punishment for culpable homicide not amounting to murder - Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect - Concealing design to commit offence punishable with imprisonment
[Gujarat Ownership Flats Act, 1973](#), [Section 3\(2\)](#), [Section 2](#), [Section 42](#), [Section 43](#), [Section 3\(e\)](#), [Section 3\(c\)](#), [Section 7\(1\)\(II\)](#), [Section 7\(1\)\(i\)](#) - General liabilities of promoter - Definitions - Offences by promoter - Offences by companies - General liabilities of promoter - General liabilities of promoter - After plans and specifications are disclosed no alterations or additions to be made without consent of persons who have agreed to take the flats; and defects noticed within a year to be rectified - After plans and specifications are disclosed no alterations or additions to be made without consent of persons who have agreed to take the flats; and defects noticed within a year to be rectified
[Bombay Provincial Municipal Corporations Act, 1949](#), [Section 257](#), [Section 392](#), [Section 461](#), [Section 458](#) - Supervision of buildings and works - Certain offences punishable with fine. - By-laws to be confirmed by 1[State] Government. - By-laws for what purpose to be made.

Citation : (2017) 03 GUJ CK 0065

Hon'ble Judges : Z.K.Saiyed

Bench : Single Bench

Advocate : NJ SHAH, SV RAJU, BHADRISH S RAJU

Final Decision : Dismissed

Judgement

1. The present revision by the applicant State under Section 397 read with Section 401 of Code of Criminal Procedure, 1973

challenges the order passed by the learned Additional City Sessions Judge, City Sessions Court No.11, Ahmedabad, in Sessions Case No.39 of 2007 below Exhibit 2 dated 5.12.2007 against discharge of the respondent, who is builder, has constructed "Shitalbag Apartment".

2. The facts in short are that in the aftermath of a devastating earthquake occurred in the morning of 26.1.2001 , in the entire State of Gujarat, many number of buildings were collapsed causing death and injuries to several persons. It was alleged that due to poor quality of material used in the construction, the building known as "Shitalbag Apartment" was also collapsed and six persons were died and several persons sustained injuries and hence, the complaint being C.R. I 83/ 2001 was lodged with Ellisbridge Police Stations for the offences under Sections 304, 418, 420, and 120(B) of Indian Penal Code and Sections 3(2), (c), (e), 7(1), (i) (ii) 2 read with Sections 42 and 43 of the Gujarat Ownership of Flat Act, 1973 and Section 257, 392, 458 and 461 of the BPMC Act inter alia alleging that the builder i.e. present respondent, who had acted against the bye-laws and rule of Ahmedabad Municipal Corporation. At the end of investigation, as there appeared prima facie case against the accused, charge sheet was submitted against the accused in the Court.

3. The respondent-accused filed application under Section 227 of the Code before the learned City Sessions Court, Ahmedabad for discharging him from the offences levelled. Said application was allowed by the learned Additional Sessions Judge, City Sessions Court, Ahmedabad, which is giving rise to this revision by the State.

4. Heard learned APP Mr. N.J. Shah for the applicant - State and learned senior counsel Mr. S.V. Raju for the respondent accused.

5. Learned APP Mr. N.J. Shah for the applicant-State has submitted that the respondent is liable for the collapse of the building as the construction of the Apartment was against the bye-laws of the Corporation and the respondent accused used sub-standard material in the construction. It is duty of the respondent as to whether the constructions were being carried out in accordance with the law or not. However, the respondent carried out the construction not in accordance with the bye-laws of the Corporation and thereby he committed the alleged offences. It is also submitted that Building Use Permissions was not granted to the building of the collapsed building by the Corporation. As per the bye-laws, structural designers, architects along with the respondent are also liable. At this stage, this Court cannot appreciate the evidence of statements of witnesses recorded by the investigating agency. The Court cannot scrutinize the evidence and is not required to see the probable defense of the accused or the chances of conviction at this stage. What is required to be seen at this stage is the prima facie case and if the Court on

going through the papers is satisfied that prima facie case is made out against the accused, charge can be framed against the accused. Here in the present set of cases, on going through the papers, it does appear that there is prima facie involvement of the respondent to frame charge and hence, it is urged that the impugned order of discharge may be quashed and set aside by allowing the revision.

6. Learned senior counsel Mr. S.V.Raju for the respondent- accused has supported the impugned order and submitted that if the entire charge sheet and the documents accompanying the same are perused, no offence is disclosed even prima facie against the respondent and therefore, the respondent is required to be discharged. It is further submitted that so far as Building Use Permission is concerned, there were large number of buildings where Building Use Permission granted, were collapsed and hence, grant of non-grant of Building Use Permission is of no consequence. It is therefore submitted that the respondent is not liable with regard to the construction, erection or soundness of the materials used in the construction. He also submitted that it is well settled law of principle regarding the discharge of the accused in various cases. He lastly prayed that the present Criminal Revision Application may kindly be rejected by confirming the impugned order passed by the lower Court.

7. This Court has gone through the relevant records as well as the impugned order of discharge. This Court has also gone through the relevant bye-laws concerning the duties and responsibilities of the respondent-accused. I am aware that in revision the Court is not bound to give detailed reasons.

8. It is true that due to devastating earthquake took place in

the entire State of Gujarat in the morning of 26th January, 2001, several buildings were collapsed causing death of several persons and injuries to many others. In pursuance thereto, various complaints were registered with various Police Stations of the State of Gujarat levelling allegations of negligence against the builders

and other persons. Thereafter, investigation was started and at the end of investigation, present respondent was charge sheeted. Since the present respondent felt that he is not liable for any negligence in the collapse of the collapsed buildings, he preferred application for discharge which was granted by the Court below and he was discharged from the offences levelled which gave rise to the present revision.

9. From the bare perusal of the papers, it appears and undisputedly clear that in the wake of the devastating earthquake, six persons had died in the building constructed by the respondent. It is not disputed that the respondent was a builder and after getting sanctioned plans, Arambh certificate was given and construction was started and the possession of the flats were given to the flat holders. It is settled that recital of the documents or the evidence cannot be gone into deep by this Court. It also appears that one Civil Suit No.1387 of

2001 was compromised and in the consent terms, it is stated that the material used for the construction of building was of good quality and proper foundation was laid in the building. Even the flat holders of Shitalnath Apartment Owners Association had filed affidavit wherein it is clearly stated that the respondent had complied with all terms and conditions of the compromise and all the flat holders had full satisfaction towards the compliance. Therefore, this Court is of the view that there is no reason to proceed with the trial against the accused.

10. This Court has also perused the decisions of this Court in Criminal Revision Application No.422 of 2006, Criminal Revision Application No.397 of 2006 and allied matters,

Criminal Revision Application No.396 of 2006 and allied matters, Criminal Revision Application Nos.705 of 2006 and allied matters, Criminal Revision Application Nos.395 of 2006 and allied matters and Criminal Revision Application Nos.418 of 2006 and allied matters, wherein this Court has adopted view to allow discharge to the accused involved in such type of offence.

11. Even from the entire papers of charge sheet and the documents annexed thereto, there is nothing to implicate that the respondent is liable or responsible for any of the offences levelled against him. No grave suspicion is made out against the respondent for framing of charge either. In view of the above, this Court is of the prima facie opinion that there is no sufficient grounds to proceed with the trial against the respondent and hence, he was rightly discharged by the learned Additional City Sessions Judge. Since no irregularity or illegality as having committed in arriving at the said findings has been noticed by this Court, these revision is required to be dismissed.

12. This Criminal Revision Application is dismissed. Rule is discharged.