

(2013) 01 GUJ CK 0046
In the Gujarat High Court

Case No : Criminal Miscellaneous Application (For Quashing and Set Aside Fir/ Order) No. 12804 of 2012 with Special Criminal Application No. 2473 of 2012

Sunil Parikh and 3

APPELLANT

Vs

State of Gujarat and 1

RESPONDENT

Date of Decision : 23-01-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 425
Prevention of Damage to Public Property Act, 1984 — Section 3, 7

Citation : (2013) 01 GUJ CK 0046

Hon'ble Judges : R.M. Chhaya, J

Bench : Single Bench

Advocate : Mihir Thakore with Ms. Archana R. Acharya, s No. 1 - 4, for the Appellant; Pratik B. Barot, Advocate for the Respondent(s) No. 2 and Ms. Moxa Thakkar, APP for the Respondent(s) No. 1, for the Respondent

Judgement

R.M. Chhaya, J.—This application as well as the petition are identical on facts, and therefore, both are disposed of by this common judgment. By way of this application, the applicants have prayed to quash and set aside the First Information Report registered with Karelibaug Police Station, Vadodara City as C.R. No. II-297/2012 and in Special Criminal Application No. 2473 of 2012, the petitioner - original accused no. 3 has prayed for the same relief. It may be noted that the petitioner in Special Criminal Application No. 2473 of 2012 has also prayed for further relief to take appropriate action against respondent no. 4 for harassing the petitioner and other accused in the interest of justice.

2. This Court (Coram: Rajesh H. Shukla, J.) vide orders dated 31.08.2012 and 27.08.2012 passed in the application and the petition respectively, admitted the matter and stayed further proceedings in pursuance to the impugned First Information Report.

3. As stated earlier, the facts arising out of this application and the petition are

similar. The facts narrated in Criminal Misc. Application No. 12804 of 2012 are taken as basis of this judgment.

4. It appears that the original complainant as well as the petitioner - accused in both the application and the petition stay in Housing Society known as "Shree Prakashnagar Cooperative Housing Society Ltd.," situated in Karelibaug of Vadodara City. It is evident from the record of the petition that the said Co-operative Housing Society is constructed upon the Final Plot No. 403 and that adjoining plot being Final Plot No. 404 is allotted and reserved for public purpose as "open space" under the Town Planning Scheme within which the same Housing Society is situated.

4.1. It further transpires from the record that civil dispute is pending between the members of the Society and the Vadodara Municipal Corporation for the use of the said Final Plot No. 404 and, therefore, other members of the Society have filed suit being Civil Suit No. 492/2012 before the Civil Court at Vadodara and as informed by the learned counsel appearing for the parties, the said Suit is pending at the stage of hearing of the application for temporary injunction (Exhibit-5). The impugned FIR is filed by respondent no. 2 alleging that benches, three in number, which were installed by the Vadodara Municipal Corporation from the grant of Mayor, Councilors and Members of Parliament, have been upturned by the applicants and the petitioner, of this application and the petition at 23:15 hrs., on 04.08.2012. It is alleged in the impugned FIR that these applicants and the petitioner, who are accused in the impugned FIR, have allegedly committed offence, as provided u/s 3 read with Section 7 of the Prevention of Damage to the Public Property Act, 1984 (hereinafter referred to as the "Act" for the sake of brevity).

5. Heard Mr. Mihir Thakore, learned Senior Counsel appearing with Ms. Archana Acharya for the applicants and the petitioner in this application and petition, Ms. Moxa Thakkar learned APP for the respondent - State and Mr. Pratik Barot, learned advocate for respondent no. 2 - original complainant.

5.1. Mr. Mihir Thakore, learned Senior Counsel has taken this Court through the factual matrix arising out of this application and the petition. Mr. Thakore has submitted that on plain reading of the impugned FIR, the only allegation which is levelled in the impugned FIR is that the applicants and the petitioner have upturned three benches which were installed in the open space of Final Plot No. 404 by the Vadodara Municipal Corporation. It is alleged that by such action on the part of the petitioner - accused, the value of the public property has diminished and hence, it is alleged that the petitioner - accused have committed offence as provided u/s 3 of the Act. Mr. Thakore has submitted that the impugned FIR is a counterblast to the Suit which is filed by the petitioner - accused and their relatives and as such no incident has taken place. Mr. Thakore further submitted that as such, as defined u/s 3 of the Act, the ingredients of Section 425 of the Indian Penal Code do not exist. Mr. Thakore further submitted that the applicants have been wrongly involved only because of the enmity and

the impugned FIR is lodged after two months of the filing of the Suit. Mr. Thakore further submitted that even the panchnama, copy of which is obtained by the petitioner -accused, does not indicate that the benches were public property and the same have been upturned by the present petitioner -accused, which has resulted into any destruction of property and it has diminished the value or utility of the property. Mr. Thakore therefore, submitted that the impugned FIR is abuse of process of Court and law and, therefore, this Court may be pleased to exercise its inherent jurisdiction u/s 482 of the Criminal Procedure Code to secure the ends of justice and allow the application and the petition as prayed for.

6. Ms. Moxa Thakkar learned APP has opposed the application and the petition. Ms. Thakkar has relied upon the police papers, which are made available, though the charge sheet is not filed yet and has contended that the ingredients of Section 425 of the Indian Penal Code are present in the allegation and if the impugned FIR is read as it is, the same constitute the offence as provided u/s 3 of the Act. She, therefore, submitted that the application as well as the petition deserve to be dismissed.

7. Mr. Pratik Barot, learned advocate appearing for respondent no. 2 has also reiterated the stand taken by learned APP and has submitted that the petitioner -accused have caused damage to the public property and on reading the impugned FIR, it is clearly established that the petitioner -accused have committed alleged offence u/s 3 read with 7 of the Act. Mr. Barot, therefore, submitted that the application as well as the petition deserve to be dismissed.

8. Before considering the submissions made by learned counsel for the parties, it would be appropriate to quote relevant provisions of law. Section 3 of the Act provides as under:-

Section 3: Mischief causing damage to public property

(1) Whoever commits mischief by doing any act in respect of any public property other than public property of the nature referred to in sub-section (2), shall be punished with imprisonment for a term which may extend to five years and with fine-

(2) Whoever commits mischief by doing any act in respect of any public property being -

(a) any building, installation or other property used in connection with the production, distribution or supply of water, light, power or energy:

(b) any oil installations:

(c) any sewage works:

(d) any mine or factory:

(e) any means of public transportation or of telecommunications, or any building, installation or other property used in connection therewith, shall be punished

with rigorous imprisonment for a term which shall not be less than six months, but which may extend to five years and with fine: Provided that the Court may, for reasons to be recorded in its judgment, award a sentence of imprisonment for a term of less than six months.

Section 425 of the Indian Penal Code provides as under:-

Section 425 -Mischief-

Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects of injuriously commits "mischief".

9. On reading First Information Report as it is, the only allegation which is reflected in the impugned FIR is that the petitioner - accused upturned three benches, which were placed upon the Final Plot No. 404 by the local authority. This Court, as observed above, has also perused the police papers, including the panchnama and statement recorded by the investigating agency till the interim order was passed by this Court. On reading the impugned FIR, except the allegation that the benches were upturned, no other allegations are found. The police papers which are submitted by learned APP and even in the First Information Report, the sole allegation in the impugned FIR, if taken at its face value along with the ingredients of Section 425 of the Indian Penal Code, nothing is found in the impugned FIR which justifies that the public property is either destroyed or the same is diminished and that by alleged action its value and utility has been diminished. Learned APP Ms. Thakkar and Mr. Barot, learned advocate for the original complainant have not been able to establish that any such evidence has come on record. Prima facie, therefore, this Court is of the opinion that the impugned FIR does not constitute offence u/s 3 of the Act read with Section 425 of the Indian Penal Code.

10. However, it may be noted that this Court (Coram: Ravi R. Tripathi, J.) has passed following order in Criminal Misc. Application No. 16168 of 2012 dated 19.11.2012:-

1. Rule returnable on 12th December, 2012. Learned Additional Public Prosecutor Mr. Shah waives service of process of Rule on behalf of respondent no. 1. Direct Service qua respondent no. 2 is permitted today. The learned advocate for the applicants states that a copy of this application is already served to the respondent no. 2.

2. Ad-interim relief in terms of para 12(BB).

11. On inquiry, learned APP Ms. Thakkar has submitted that three benches have been removed by the police authorities and are lying with the police authorities as mudammal. In view of the conclusion arrived at as below, the police authorities shall immediately restore the three benches, which are seized as mudammal, on the Final Plot No. 404, as it existed. It is, however, made clear

that the same shall be subject to the rights and contentions of the respective parties in Civil Suit No. 492/2012 and this observation is made only in connection with the order dated 19.11.2012 passed in Criminal Misc. Application No. 16168 of 2012 and other application and this petition. In view of the aforesaid, this Court is of the prima facie opinion that the impugned FIR does not constitute offence u/s 3 of the Act and Section 425 of the Indian Penal Code. In the facts and circumstances of this case, therefore, any further continuance of impugned FIR would amount to harassment to the applicants and petitioner - accused and would also amount to abuse of process of Court and law and, therefore, Criminal Misc. Application No. 12084 of 2012 is allowed. Special Criminal Application No. 2473 of 2012 is partly allowed. The impugned First Information Report registered as C.R. No. II-2927/2012 lodged with Karelibaug Police Station, Vadodara City as well as other proceedings are hereby quashed to secure ends of justice. The prayer prayed in paragraph 13[B] of the petition is not granted. Rule is made absolute only to the aforesaid extent.