

(2011) 11 GUJ CK 0028
In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 8760 of 2004

Suresh Shukhlal Basne and 2

APPELLANT

Vs

Mahadevprasad Chintamani Sayan and 1

RESPONDENT

Date of Decision : 24-11-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 482
Penal Code, 1860 (IPC) — Section 114, 323, 392, 393, 394

Citation : (2011) 11 GUJ CK 0028

Hon'ble Judges : Mukesh R. Shah, J

Bench : Single Bench

Advocate : K.J. Panchal and Ms Krishna R. Mandani s - 3, for the Appellant; A.K. Chitnis and Mr. Shyam S Shevade for Respondent 1 and Mr. LB Dabhi, Assistant Public Prosecutor for Respondent(s) : 2, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice M.R. Shah

1. Present criminal miscellaneous application u/s 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "CrPC") has been preferred by the applicants herein - original accused to quash and set aside the impugned complaint being Criminal Case No. 1328/2004 (Inquiry Case No. 76/2003) pending in the Court of learned Judicial Magistrate First Class (Municipal), Vadodara as well as the orders dated 21.11.2003, 19.02.2004 and 08.03.2004 passed in it and to quash and set aside the order passed by the learned Magistrate issuing process against the applicants for the offences under Sections 323, 392, 394, 452, 504, 506(2) and 114 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC").

2. Respondent No. 1 herein had instituted/filed a complaint being Inquiry Case No. 76/2003 against the applicants before the learned JMFC, Vadodara for the offences punishable under Sections 323, 452, 427, 392, 394, 504, 506(2) and 114 of the IPC alleging inter-alia that his son Rakesh died in an accident on

18.05.2003 who had earlier married with daughter of original accused No. 1 and sister of original accused Nos.2 and 3 on 20.04.2003, Shakuntala. It is further alleged in the said complaint that subsequently after the death of his son, he tried to see that his daughter-in-law gets service and even amount which is received from the department towards PF etc. was also paid to his daughter-in-law and after she got the job, the accused persons tried to see that she resides with them and therefore, they gave threats to the complainant on 29.10.2003 that she he will be killed and take his daughter-in-law with them along with all ornaments etc. It is further alleged that again on 14.11.2003, all the accused persons came in auto rickshaw, entered the house of the complainant and caused damage to the property and caused injury to him and at that time original accused No. 1 was having hockey stick, original accused No. 2 was having rampuri knife and original accused No. 3 was having a stick. It is further alleged that on that day even further threats were given and they have committed loot and stolen gold as well as silver ornaments. Therefore, for the offences alleged to have happened on 29.10.2003 and 14.11.2003, respondent No. 1 - original complainant lodged the private complaint in the Court of learned JMFC, Vadodara which was registered as Inquiry Case No. 76/2003. Initially, the learned Magistrate passed an order for inquiry u/s 202 of the CrPC and directed the Police Officer of Makarpura Police Station to hold inquiry and submit the report. It appears that the Investigating Officer submitted the report before the learned Magistrate u/s 202 of the CrPC and though it was specifically submitted in the report that as such there is no independent witness and/or the case on behalf of the complainant is not believable at all, the Investigating Officer reported that accused persons have committed offence under Sections 323, 504, 427, 506(2) and 114 of the IPC and opined that the accused persons have not committed any other offence as alleged i.e. offence under Sections 452, 392 and 394 of the IPC. That thereafter the learned Magistrate by impugned order has directed to issue process against the applicants - accused persons for all the offences i.e. for the offences under Sections 323, 392, 394, 452, 504, 506(2) and 114 of the IPC. That thereafter the case is numbered as Criminal Case No. 1328/2004 which is pending in the Court of learned JMFC, Vadodara. Being aggrieved and dissatisfied with the impugned criminal case as well as the order passed by the learned Magistrate issuing process against the applicants in the same complaint, applicants - accused have preferred the present Criminal Miscellaneous Application u/s 482 of the CrPC.

3. Shri K.J. Panchal, learned advocate appearing on behalf of the applicants has vehemently submitted that as such the applicants have not committed any offence as alleged and the impugned complaint is filed with malafide intention. It is further submitted that even the Investigating Officer in its report, which was submitted pursuant to the order passed by the learned Magistrate u/s 202 of the CrPC, specifically reported that the complaint filed by the complainant is with malafide intention and that there are no other independent witnesses and that they are not supported by any other documentary evidence, still learned

Magistrate has directed to issue process against the applicants. It is submitted that even though the Investigating Officer reported and/or opined for the offences under Sections 323, 427, 504, 506(2) and 114 of the IPC, without proper application of mind the learned Magistrate has directed to issue process against the applicants - accused for other offences also. It is submitted that as such there are no other independent evidences and/or documentary evidences with respect to the offences alleged to have been committed on 29.10.2003 and 14.11.2003. It is submitted that neither with respect to the damage caused to the property and/or even injury caused to the complainant, no evidence has been produced at all. It is further submitted that even the very complainant submitted the representation to the Commissioner of Police on 11.11.2003 and in that application also, there as no reference to the alleged incident of giving threats on 29.10.2003. It is submitted that therefore, only with a view to see that his daughter-in-law resides with them, impugned complaint has been filed with mala fide intention, which is nothing but abuse of process of Court and law. Therefore, it is requested to quash and set aside the impugned complaint as well as the order passed by the learned Magistrate directing to issue process against the applicants in the said complaint.

4. Shri Shevde, learned advocate appearing on behalf of the original complainant has submitted that when the learned Magistrate has directed to issue process against the applicants after considering the report submitted by the Investigating Officer and considering the material on record, the same is not required to be interfered by this Court while exercising powers u/s 482 of the CrPC. Therefore, it is requested to dismiss the present application.

5. Shri Dabhi, learned Additional Public Prosecutor appearing on behalf of the State has requested to pass appropriate order considering the facts and circumstances of the present case.

6. Heard the learned advocates appearing on behalf of the respective parties at length and perused and considered the record and proceedings which were called from the learned trial Court. From the complaint and even the statement of the original complainant, it appears that the allegations against the applicants are with respect to two incidents, one on 29.10.2003 and another on 14.11.2003. It is alleged that on 29.10.2003, the accused persons gave threats and it is further alleged that on 14.11.2003, they came in auto rickshaw with stick, knife and hockey stick and they entered into his house illegally, damaged the property and caused injury to him by giving hockey stick blow. On considering the entire material on record, it appears that there is not a single independent witness supporting the case of the complainant. Not a single neighbour is supporting the case of the complainant. On the contrary, there is one statement of one neighbour stating that no such incident has taken place. Even medical certificate and/or any evidence with respect to taking of medical treatment is not produced on record. If the complainant had sustained injury on 14.11.2003 as alleged then he would have certainly gone to the doctor and would have taken the treatment.

It is also required to be noted that even with respect to the alleged incident of 29.10.2003, there is no reference to the same in the representation made by the complainant to the Commissioner of Police apprehending that his son has been murdered and it was not an accidental death. If at all any threat would have been given to the original complainant on 29.10.2003, in that case, complainant would have certainly mentioned the same in his representation dated 11.11.2003. Under the circumstances and even considering the report submitted by the Investigating Officer submitted while holding inquiry u/s 202 of the CrPC, this Court is satisfied that no case is made out against the applicants herein for the offences as alleged and for which the process is issued against them. Therefore, to continue the criminal proceedings against the applicants would be unnecessary harassment to them and it would be abuse of process of Court and law. Considering the report submitted by the Investigating Officer, the learned Magistrate has materially erred in directing to issue process against the applicants - accused for the offences punishable under Sections 323, 392, 394, 452, 504, 506(2) and 114 of the IPC, which deserves to be quashed and set aside.

7. In view of the above and for the reasons stated above, application succeeds. Impugned Criminal Case No. 1328/2004 (Inquiry No. 76/2003) pending in the Court of learned JMFC (Municipal), Vadodara and the order/s passed by the learned Magistrate in the said complaint and directing to issue process against the applicants in the said complaint, are hereby quashed and set aside. Rule is made absolute accordingly. Registry is directed to return the Record & Proceedings to the learned trial Court immediately.