

(2024) 02 GUJ CK 0096

In the Gujarat High Court

Case No : R/Criminal Misc.Application (For Quashing & Set Aside Fir/Order) No. 2381 Of 2020, Criminal Misc.Application (For Vacating Interim Relief) No. 1 Of 2024, In R/Criminal Misc.Application No. 2381 Of 2020

Umang Haribhai Thakkar & Anr

APPELLANT

Vs

State Of Gujarat & Anr

RESPONDENT

Date of Decision : 27-02-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 114, 294(1), 506(1)
Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(1(r), 3(2)(va)

Citation : (2024) 02 GUJ CK 0096

Hon'ble Judges : Cheekati Manavendranath Roy, J

Bench : Single Bench

Advocate : Virat G Popat, KV Shelat, Hardik Soni

Final Decision : Disposed Of

Judgement

Cheekati Manavendranath Roy, J

1. This Criminal Misc. Application under Section 482 of the Criminal Procedure Code is filed seeking quash of FIR No.B-11191042200024 of 2020 registered with Satellite Police Station, Ahmedabad City, against the petitioners for the offences punishable under Sections 506 (1), 294 (1) and 114 of the Indian Penal Code and Section 3 (1) (r) and 3 (2) (v-a) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act.

2. Heard Mr.Virat Popat, learned counsel for the petitioners, Mr.Hardik Soni, learned APP for the respondent-State and Mr.K.V.Shelat, learned counsel for the second respondent-defacto complainant.

3. The facts of the prosecution case in a nutshell may be stated as follows:-

3.1 The defacto complainant is the power of attorney holder in respect of the

land in question said to have been executed by its original owner. It is stated that, on 17.7.2019, when the defacto complainant reached the said land and parked his four wheeler in the said land, accused no.4, who is the watchman engaged by the petitioners herein, who are accused nos.1 and 2, objected the complainant for parking his four wheeler in the said land and stated that if he parks the vehicle in the said land that the petitioners, who are accused nos.1 and 2, would kill him.

3.2 Thereafter, on 12.1.2020, the defacto complainant has lodged a report with the police and the said report is registered as FIR for the offences punishable under Sections 506 (1), 294 (1) and 114 of the Indian Penal Code and Section 3 (1) (r) and 3 (2) (va) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, against the petitioners, who are accused nos.1 and 2 and also against two other persons, who are accused nos.3 and 4.

3.3 The petitioners, who are accused nos.1 and 2, sought quash of the said FIR. Accused nos.3 and 4 did not seek quash of the FIR. In fact, as per the submissions made by learned APP, on instructions, that the investigation is completed and charge-sheet is also filed against accused nos.3 and 4. Accused no.3 is the transporter engaged by accused nos.1 and 2 for the purpose of transporting construction material. As notices supra, accused no.4 is a watchman engaged by accused nos.1 and 2. Charge-sheet against present petitioners, who are accused nos.1 and 2, could not be filed as there was an interim order not to take any coercive steps against the petitioners.

3.4 The petitioners, who are accused nos.1 and 2, sought quash of the FIR on the ground that admittedly the petitioners were not present at the scene of offence when the alleged incident took place and that the alleged threat is also given only by accused no.4 -watchman. Therefore, no offence whatsoever is made out against the petitioners herein for the offences punishable under Sections 506 (1), 294 (1) and 114 of the Indian Penal Code. So, it is prayed to quash the said FIR against the petitioners as allowing the criminal proceedings to continue against them would amount to abuse of process of Court.

4. Learned counsel for the petitioner would contend that the original owner of the said land sold away the same to another person by name Girish Patel long back on 17.9.1999 and he, in turn, sold away said land to another person and, thereafter, the present petitioners, who are accused no.1 and 2, entered into an Agreement to Sell with present owner of the said land by name Dipak Shah and Development Agreement was also executed in their favour and they have been constructing apartments in the said land. He further contends that the defacto complainant, who is claiming to be the power of attorney holder from the erstwhile owner of the said land is claiming right over the said land and there is civil dispute pending in the Civil Court relating to said claim between both the parties and, in the said circumstances, present case is foisted against the petitioners.

4.1 He then contends that, even as per the allegations set out in the FIR, there is absolutely no allegation against these petitioners and they are also not present at the scene of offence and said FIR is liable to be quashed as allowing the proceedings to be continued against them without any basis would amount to abuse of process of Court.

5. Learned APP fairly conceded that the petitioners are not present at the scene of offence when the alleged incident took place, as per the allegations set out in the FIR, and it is only accused nos.4, who has threatened the defacto complainant stating that if he parks his vehicle in the said land that the petitioners herein would kill him.

6. Learned counsel for the second respondent contends that even though the petitioners are not present at the time of incident at the scene of offence, the subsequent conversation between the defacto complainant and the petitioners herein, which was recorded by him clearly shows that the petitioners have stated that at their instance the accused no.4 had threatened to kill him and as such the petitioners are also liable for prosecution. He contends that said recording of the conversation is handed over to the investigation officer and it was sent to RFSL and report is received and it is in the custody of the police.

7. Responding to the same, learned APP contends that said audio recording is sent to RFSL and a report was received and there is nothing in it to indicate that the petitioners have stated that they are responsible for uttering said words by the accused no.4.

8. As can be seen from the contents of the FIR and the allegations as ascribed therein, as rightly contended by the learned counsel for the petitioner, the petitioners, who are accused nos.1 and 2, are not at all present at the scene of offence when the said incident took place. Even according to the allegations made in the FIR, when the defacto complainant has parked his four wheeler at the site, which is the scene of offence, it is only accused no.4, who is the watchman, objected the defacto complainant to park his four wheeler stating that if he parks his vehicle at that place then accused nos.1 and 2 would kill him. Therefore, having regard to the specific allegations made in the FIR, nothing can be attributed to these petitioners, who are accused nos.1 and 2, regarding commission of any offence for which FIR was registered. As they are not present at the scene of offence and they did not threaten the defacto complainant, no criminal liability can be fastened against them for any of the offences for which FIR was registered.

9. Although it is contended by learned counsel for the second respondent-defacto complainant that subsequently when the defacto complainant questioned the petitioners herein they have admitted that at their instance accused no.4 has given the said threat and said conversation was recorded and that recording is given to the police and it was sent to RFSL, learned APP now has fairly conceded that as per the RFSL report, there is nothing to indicate in it that the said

conversation belong to the petitioners, who are accused nos.1 and 2. Even otherwise, that by itself will not constitute an offence punishable under Sections 506 (1) of IPC against the petitioners as they did not give threat to kill the complainant.

10. Apart from it, it is also relevant to note that there is inordinate delay in lodging the FIR against the petitioners and the other accused. The offence took place according to the defacto complainant on 17.7.2019. The defacto complainant has lodged the report with the police on 12.1.2020 i.e. after four months. Thus, there is inordinate delay of four months in lodging the FIR. Said delay is not explained by the defacto complainant. So it also throws any amount of doubt regarding the veracity of the allegations ascribed by the defacto complainant and in lodging prompt FIR in this regard.

11. So viewed from any angle, no offence is made out against the petitioners from the allegations set out in the FIR. Therefore, in the said facts and circumstances of the case, continuation of criminal proceedings initiated by registering FIR against the petitioners, who are accused nos.1 and 2, would amount to abuse of process of the Court. No case is made out against the petitioners to prosecute them for the said offence.

12. Resultantly, this Criminal Misc. Application is allowed. The FIR No.B-11191042200024 of 2020 registered with Satellite Police Station, Ahmedabad City, against the petitioners, who are accused nos.1 and 2, is hereby quashed. As it is stated that the charge-sheet against accused nos.3 and 4 is already filed, after completion of investigation, the law has to take its own course against them.

13. In view of above order, Criminal Misc. Application No.1 of 2024 filed for vacating interim relief does not survive and the same is disposed of.