

Dineshbhai Chandubhai Patel vs The State Of Gujarat on 5 January, 2018

Equivalent citations: AIR 2018 SUPREME COURT 314, AIR 2018 SC (CRIMINAL) 370, (2018) 1 BOMCR(CRI) 314, (2018) 4 MH LJ (CRI) 534, (2018) 1 PAT LJR 326, (2018) 1 CRILR(RAJ) 54, (2018) 1 MADLW(CRI) 401, (2018) 69 OCR 551, (2018) 2 RAJ LW 1165, (2018) 1 MAD LJ(CRI) 529, (2018) 1 RECCRIR 617, (2018) 1 SCALE 97, 2018 (1) SCC (CRI) 683, (2018) 1 UC 433, 2018 CRILR(SC&MP) 54, (2018) 1 CURCRIR 120, (2018) 104 ALLCRIC 914, (2018) 186 ALLINDCAS 194 (SC), (2018) 1 ALLCRILR 877, 2018 CRILR(SC MAH GUJ) 54, (2018) 1 GUJ LH 186, (2018) 1 JLJR 150, 2018 (104) ACC (SOC) 16 (SC), 2018 (2) KCCR SN 157 (SC)

Author: Abhay Manohar Sapre

Bench: Abhay Manohar Sapre, R.K. Agrawal

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 12 OF 2018
(Arising out of S.L.P.(CrI.)No.5155 of 2017)

Dineshbhai Chandubhai PatelAppellant(s)

VERSUS

State of Gujarat & Ors.Respondent(s)

WITH
CRIMINAL APPEAL NO.13 OF 2018
(Arising out of S.L.P.(CrI.)No.5322 of 2017)
Balubhai Ravjibhai AhirAppellant(s)

VERSUS

State of Gujarat & Ors.Respondent(s)

CRIMINAL APPEAL NO.15 OF 2018
(Arising out of S.L.P.(CrI.)No.5476 of 2017)

Arjun Shankarbhai RathodAppellant(s)

VERSUS

Signature Not Verified

Harishbhai Ramanbhai Rathod
& Ors. Etc.Etc.

...Respondent(s)

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ASHA SUNDRIYAL
Date: 2018.01.05
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Reason:

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CRIMINAL APPEAL NO. 14 OF 2018
(Arising out of S.L.P.(CrI.)No.5475 of 2017)

Manish Patel(Advocate)Appellant(s)

VERSUS

Harishbhai Ramanbhai Rathod
& Ors. Etc.Etc.Respondent(s)

CRIMINAL APPEAL NO.16 OF 2018
(Arising out of S.L.P.(CrI.)No.5500 of 2017)

Harishbhai Ramanbhai RathodAppellant(s)

VERSUS

State of Gujarat & Anr.Respondent(s)

AND

CRIMINAL APPEAL NO. 17 OF 2018
(Arising out of S.L.P.(CrI.)No.5867 of 2017)

Manharbhai Muljibhai KakadiaAppellant(s)

VERSUS

State of Gujarat & Ors.Respondent(s)

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JUDGMENT

Abhay Manohar Sapre, J.

1) Leave granted.

2) These appeals are filed against the common final judgment and order dated 10.07.2017 passed by the High Court of Gujarat at Ahmedabad in Criminal Misc. Application (for quashing and set aside FIR/Order) No. 16731 of 2016 with Crl. Misc. Appln. Nos. 13733, 14842/2016, SPCRA Nos. 4387, 4357, 4951/2016, Crl.Misc. Appln. No. 32440/2016 in Crl. Misc. Appln. No.16731/2016 whereby the Single Judge of the High Court partly allowed the application for quashing the FIR.

3) In order to appreciate the issues involved in this bunch of appeals, it is necessary to state few relevant facts. The facts are taken from the SLP paper books.

4) The dispute arising between the parties to this bunch of appeals essentially relates to a piece of land bearing Survey No. 96/3/2, Block No. 121, admeasuring 5281 sq. mts., Plot No. 71, admeasuring 3475 sq. mts. of Town Planning Scheme No. 36 (Althan), situated at village Althan, Taluka & city -Surat (hereinafter referred to as "the disputed land").

5) The disputed land was jointly owned by the members of one Rathore family, who according to them, belonged to Halpai caste.

6) Six members of the Rathore Family (hereinafter referred to as the Complainants) filed one joint complaint to the Commissioner of Police, Surat on 25.04.2011 (Annexure-P-2) complaining therein that one person by name - Dineshbhai Chandubhai Patel in conspiracy with several other named persons jointly defrauded and deceived the complainants by taking advantage of their illiteracy, poverty and unawareness got executed bogus Power of Attorney with bogus signatures in relation to the disputed land. It was alleged that these persons again in furtherance with the conspiracy got the disputed land transferred in favour of several persons and illegally got the construction maps sanctioned to enable them to do construction over the disputed land.

7) In short and in substance, the grievance of the complainants was that the above named persons conspired together and snatched away from the complainants their aforementioned valuable land by committing fraud, cheating, deception, breach of trust etc. on them.

8) The complainants enclosed all disputed documents along with their complaint to show prima facie case alleged to have been committed by the above-named persons and prayed to the Commissioner of Police to investigate the entire case in relation to their land and bring the investigation to its logical end by first registering the FIR and then after holding a proper investigation, file the charge sheet in the competent Court against all those found involved in the case and prosecute them for the offences which they have allegedly committed and punish them under the Indian Penal Code and other related Acts.

9) This was followed by another complaint (Annexure P-6) filed with the Collector (SIT), Surat on 23.01.2012 against six named persons seeking therein the prosecution of those persons for having committed the alleged offences punishable under Sections 34, 114, 120-B , 420 ,465 ,468, 471 and 476 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") read with Sections 3, 7 and 11

of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The complaint also set out the allegations with details alike the previous one with some new facts.

10) Yet another third complaint was filed with the Collector, District Disputes Redressal Forum, Surat (Annexure-P-13) on 07.10.2013 by one of the complainants against 8 named persons making more or less same allegations made in the first two complaints with more detailed facts seeking to prosecute them for the commission of offences named in the earlier complaints.

11) It is these three complaints which led to registration of the FIR (CR No.I.C.R. No. 90 of 2016) on 06.06.2016 with Khatodara Police Station, Surat giving rise to filing of several criminal applications, bail petitions etc. one after the other at the instances of the named accused persons and others alleged to be involved in the cases.

12) These cases were filed in the lower Court, the High Court and also in this Court one after the other during the last 4 years. The Courts passed several orders with observations made therein.

13) The present bunch of appeals arises out of the criminal applications filed by the named accused persons in the aforementioned three complaints under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “the Code”) in the Gujarat High Court seeking therein a prayer to quash the aforementioned FIR.

14) By impugned judgment dated 10.07.2017, the Single Judge of the High Court partly allowed the criminal applications and passed the following operative portion of the judgment contained in Para 88 which reads as under:

“(1) The First Information Report, so far as the offence punishable under Sections 406, 420, 120B of the Indian Penal Code and the Atrocities Act is concerned, is quashed. The investigation as regards the allegations of creating the two bogus power of attorneys and erasing of 73AA is concerned, shall be completed by the Commissioner of Police, Surat in accordance with law.

(2) The Commissioner is also directed to undertake the investigation as regards the persons, who had approached the land owners and had obtained the thumb impressions on the complaints addressed to the Commissioner of Police, Surat. To put it in other words, I direct the Commissioner to undertake proper investigation as regards the allegations of blackmailing and extortion leveled against the particular persons.”

15) It is against this judgment, both parties, i.e., the complainants and the accused persons have felt aggrieved and filed these appeals.

16) So far as the accused persons are concerned, they have challenged that part of the order by which the High Court has dismissed their criminal applications and declined to quash the FIR in relation to some offences alleged against them.

According to the accused persons, the High Court should have quashed the entire FIR instead of quashing part of it.

17) So far as the complainants are concerned, they have challenged that part of the judgment by which the High Court has quashed the FIR in relation to some offences. According to the Complainants, the High Court should have upheld the entire FIR as it being legal and proper, it should have been given full effect in accordance with law against the accused persons.

18) This is how, the entire controversy is now again raised before this Court in this bunch of appeals by way of special leave at the instance of the complainants and accused persons in their respective appeals.

19) Heard Mr. Mukul Rohtagi, Dr. A.M. Singhvi, Mr. Yatin Oza, Ms. Meenakshi Arora and Mr. Shamik Sanjanwala, learned senior counsel for the accused persons and Mr. Dushyant Dave and Mr. Harin P. Raval, learned senior counsel for the complainants.

20) Mr. Mukul Rohatgi, Dr. A.M. Singhvi, Mr. Yatin Oza and Ms. Meenakshi Arora, learned senior counsel appearing for the accused persons, in their respective appeals, strenuously contended that the High Court had rightly quashed the FIR in part but erred in not proceeding to quash the FIR in full because in the light of the findings on which the FIR was quashed in part, nothing then remained for the investigating authorities to probe in the remaining FIR which was upheld.

21) It is this submission, which was elaborated by all the senior counsel by placing reliance on several documents, observations of the High Court made in the earlier round of litigation and in the impugned judgment with a view to show that the entire FIR is an abuse of legal process and caused harassment to the accused persons. It was urged that FIR does not make out any much less prima facie case against any of the accused persons as the parties having settled the matter in writing and the complainants having accepted the huge consideration from the accused persons, there does not arise any cause to the Complainants to now file such belated FIR against the accused persons in relation to the subject matter in question. According to the learned counsel, it is also barred.

22) In reply, learned senior counsel Mr. Dushyant Dave and Harin P. Rawal appearing for the complainants urged that the High Court should have dismissed the criminal applications filed by the accused persons and upheld the entire FIR as a whole for being probed as, according to them, the FIR did disclose prima facie cognizable offences against the accused persons named therein. It was urged that keeping in view the nature of the offences, the law of limitation does not apply as has been held by this Court in number of similar cases.

23) Learned counsel further urged that there was no justification much less legal justification on the part of the High Court to have quashed the FIR in part and hence the judgment to that extent deserves to be set aside.

24) It is this submission, which was elaborated by the learned senior counsel by placing reliance on several documents filed by them including placing reliance on the observations of the High Court in

the earlier round of litigation and the impugned judgment and at the same time also denied the documents filed by the accused persons including their contents and correctness.

25) Having heard the learned counsel for the parties at length and on perusal of the record of the case, we are inclined to accept the submissions of the learned counsel appearing for the Complainants finding force therein whereas we do not find any merit in the submissions urged by the learned counsel appearing for the accused persons.

26) The law on the question as to when a registration of the FIR is challenged seeking its quashing by the accused under Article 226 of the Constitution or Section 482 of the Code and what are the powers of the High Court and how the High Court should deal with such question is fairly well settled.

27) This Court in *State of West Bengal & Ors. vs. Swapan Kumar Guha & Ors.* (AIR 1982 SC 949) had the occasion to deal with this issue. Y.V. Chandrachud, the learned Chief Justice speaking for Three Judge Bench laid down the following principle:

“Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. If on a consideration of the relevant materials, the Court is satisfied that an offence is disclosed, the Court will normally not interfere with the investigation into the offence and will generally allow the investigation in the offence to be completed for collecting materials for proving the offence.

The condition precedent to the commencement of investigation under S.157 of the Code is that the F.I.R. must disclose, prima facie, that a cognizable offence has been committed. It is wrong to suppose that the police have an unfettered discretion to commence investigation under S.157 of the Code. Their right of inquiry is conditioned by the existence of reason to suspect the commission of a cognizable offence and they cannot, reasonably, have reason so to suspect unless the F.I.R., prima facie, discloses the commission of such offence. If that condition is satisfied, the investigation must go on. The Court has then no power to stop the investigation, for to do so would be to trench upon the lawful power of the police to investigate into cognizable offences.”

28) Keeping in view the aforesaid principle of law, which was consistently followed by this Court in later years and on perusing the impugned judgment, we are constrained to observe that the High Court without any justifiable reason devoted

89 pages judgment (see-paper book) to examine the aforesaid question and then came to a conclusion that some part of the FIR in question is bad in law because it does not disclose any cognizable offence against any of the accused persons whereas only a part of the FIR is good which discloses a prima facie case against the accused persons and hence it needs further investigation to that extent in accordance with law.

29) In doing so, the High Court, in our view, virtually decided all the issues arising out of the case like an investigating authority or/and appellate authority decides, by little realizing that it was exercising its inherent jurisdiction under Section 482 of the Code at this stage.

30) The High Court, in our view, failed to see the extent of its jurisdiction, which it possess to exercise while examining the legality of any FIR complaining commission of several cognizable offences by accused persons. In order to examine as to whether the factual contents of the FIR disclose any prima facie cognizable offences or not, the High Court cannot act like an investigating agency and nor can exercise the powers like an appellate Court. The question, in our opinion, was required to be examined keeping in view the contents of the FIR and prima facie material, if any, requiring no proof.

31) At this stage, the High Court could not appreciate the evidence nor could draw its own inferences from the contents of the FIR and the material relied on. It was more so when the material relied on was disputed by the Complainants and visa-se-versa. In such a situation, it becomes the job of the investigating authority at such stage to probe and then of the Court to examine the questions once the charge sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.

32) In our considered opinion, once the Court finds that the FIR does disclose prima facie commission of any cognizable offence, it should stay its hand and allow the investigating machinery to step in to initiate the probe to unearth the crime in accordance with the procedure prescribed in the Code.

33) The very fact that the High Court in this case went into the minutest details in relation to every aspect of the case and devoted 89 pages judgment to quash the FIR in part lead us to draw a conclusion that the High Court had exceeded its powers while exercising its inherent jurisdiction under Section 482 of the Code. We cannot concur with such approach of the High Court.

34) The inherent powers of the High Court, which are obviously not defined being inherent in its very nature, cannot be stretched to any extent and nor can such powers be equated with the appellate powers of the High Court defined in the Code. The parameters laid down by this Court while exercising inherent powers must always be kept in mind else it would lead to committing the jurisdictional error in deciding the case. Such is the case here.

35) On perusal of the three complaints and the FIR mentioned above, we are of the considered view that the complaint and FIR, do disclose a prima facie commission of various cognizable offences alleged by the complainants against the accused persons and, therefore, the High Court instead of dismissing the application filed by the accused persons in part should have dismissed the application as a whole to uphold the entire FIR in question.

36) Learned counsel for the accused persons after the arguments were over filed brief note and placed reliance on 2 decisions of this Court reported in (2015) 11 SCC 730 and (2011) 3 SCC 351 in support of their contentions. We have perused the 2 decisions. In our view, both the decisions are

distinguishable on facts, whereas the decision on which we have placed reliance is more on the point. It is for the reason that in the first place, the 2 decisions relied on by the learned counsel for the accused persons were the cases where a complaint was filed in the Court under Section 138 of the Negotiable Instruments Act and in other case under some sections of IPC. It is this complaint which was sought to be quashed by invoking the inherent jurisdiction under Section 482 of the Code. Such is not the case here. Secondly, the decision therefore turned on the facts involved in respective cases.

37) In the case at hand, the challenge is especially to registration of the FIR. This Court in Swapan Kumar Guha (supra) case examined the exercise of inherent powers of the High Court in the context of a challenge to an FIR. In our view, therefore, the law laid down in Swapan Kumar Guha (supra) is directly applicable to the facts of this case as against the law laid down in the two cited decisions.

38) In the light of foregoing discussion, it is now necessary that the matter, which is subject matter of FIR in question, needs to be investigated in detail by the investigating authorities in accordance with procedure prescribed in the Code.

39) We have purposefully refrained from making any observation on the merits and also refrained from giving our reasoning on factual issues arising out of the case, else it may cause prejudice to the parties and also hamper the on-going investigating process undertaken by the police authorities.

40) Though learned senior counsel appearing for the parties argued the issues touching the merits of the case by referring to hundreds of documents but, in our view, it is wholly unnecessary to enter into the factual arena once we record a finding that a prima facie case is made out on reading the FIR including the documents enclosed therein. We, therefore, do not consider it necessary to go in detail of their submissions. Needless to say, all these submissions and unproved and disputed documents on which reliance was placed by the parties would be dealt with at a later stage as and when the occasion arises.

41) In view of foregoing discussion, the appeals filed by the complainants, i.e., criminal appeals @ S.L.P. (Crl.) Nos. 5476 & 5475 of 2017 are allowed. The impugned judgment is set aside. As a sequel to our order, the appeals filed by the accused persons, i.e., criminal appeals @ S.L.P.(Crl.) Nos. 5155, 5322, 5500 & 5867/2017 are dismissed.

42) As a consequence, the criminal applications filed by the accused persons under Section 482 of the Code out of which these appeals arise are dismissed.

43) Since the FIR is pending for quite some time, we direct the investigating authorities to complete the investigation of the case without any bias and prejudices strictly in accordance with law and proceed ahead expeditiously.

44) Before parting, we consider it proper to clarify that this order should not be construed as having decided any issue on merits either way. The investigating authorities would not, therefore, be influenced in any manner by any of the observations made by the lower Courts and the High Court

in their respective orders while investigating the matter.

.....J. [R.K. AGRAWAL]J. [ABHAY MANOHAR
SAPRE] New Delhi;

January 5, 2018