

Gujarat High Court

Arjanbhai Vihabhai Gamara vs State Of Gujarat on 12 October, 2020

Bench: A.S. Supehia

R/CR.MA/9052/2020

ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL MISC.APPLICATION NO. 9052 of 2020

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ARJANBHAI VIHABHAI GAMARA

Versus

STATE OF GUJARAT & 1 other(s)

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Appearance:

MR VICKY B MEHTA(5422) for the Applicant(s) No. 1

NOTICE SERVED(4) for the Respondent(s) No. 2

MS. SHRUTI PATHAK, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE A.S. SUPEHIA

Date : 12/10/2020

ORAL ORDER

1. RULE. Learned APP waives service of notice of Rule on behalf of the respondent-State.

2. By way of the present application under Section 482 of the Code of Criminal Procedure, 1973 (for short, the 'Code'), the applicant prays for quashing and setting aside the FIR. being C.R.No.11192029200049 of 2020 registered with Koth Police Station, Ahmedabad (Rural), District Ahmedabad for the offence punishable under Sections 406, 420, 465, 467 and 120B of the Indian Penal Code, 1860 (IPC).

3. Learned advocate for the applicant has taken this Court through the factual matrix arising out of the present application.

4. At the outset it is submitted by the learned advocate appearing for the applicant (Accused no.4) that the FIR is registered at the highly belated stage i.e. more than 20 months of the alleged incident. He has submitted that the sale deed in favour of the present applicant was registered on 24.08.2018. He has submitted that the complainant had submitted two complaints prior to filing of the present FIR, however, there is no whisper about a single word against the applicant and thereafter, suddenly the present FIR is registered and, therefore, the present FIR is required to be quashed and set aside.

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5. The learned advocate for the applicant has submitted that instead of showing the present applicant as a witness or permitting the applicant to file criminal proceedings against the accused No.3, the applicant is shown as the accused No. 4 in the present FIR. He has further submitted that

the present applicant is duped by the present accused No.3 whereby the accused No. 3 has pocketed the entire sale consideration of Rs.8/- lakhs and executed a sale deed for the land in question, which was sold twice. It is submitted that no offence of forgery or cheating is established against the present applicant since the entire amount was received by the accused no.3 who has executed the sale deed in favour of the petitioner on 24.08.2018. It is submitted that the petitioner later on came to know that the said land was already sold by the accused no.3 to one Smt. Jayshreeben Anilkumar Mehta vide registered sale deed on 23.06.2018, and also sold the land to the complainant on 13.06.2018. It is submitted that in fact the petitioner was cheated by the accused No.3, hence he filed a complaint before the Special Investigation Team (SIT) on 05.12.2018. Finally, it is submitted that the complainant has also filed a Civil Suit against one Nayanben Prafulbhai Modi before the Principal Senior Civil Judge being Special Civil Suit no.31 of 2019. Hence, he has submitted that the present FIR may be quashed.

6. Per contra, the learned Additional Public Prosecutor appearing on behalf of the respondent - State has opposed to quash and set aside the FIR looking to the nature and gravity of the offence. She has submitted that as per the report of the investigation officer, the petitioner has directly sold the property without revenue or search report.

7. This Court has considered the rival submissions advanced by the learned advocates appearing for the respective parties. Though served R/CR.MA/9052/2020 ORDER with the notice of this Court, the Respondent no.2 has not chosen to appear before this Court.

8. At the outset, I may refer to the judgment of the Supreme Court in the case of Md.Ibrahim & Ors. v. State of Bihar & Anr., AIR 2010 SC 347 while examining the provisions of Sections 464 and 467 has held thus:

"9. The term "forgery" used in these two sections is defined in section "463. Whoever makes any false documents with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into express or implied contract, or with intent to commit fraud or that the fraud may be committed, commits forgery. Section 464 defining "making a false document" is extracted below : "464. Making a false document.--A person is said to make a false document or false electronic record---

First.--Who dishonestly or fraudulently -

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any digital signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the digital signature, with the intention of causing it to be believed that such document or

a part of document, electronic record or digital signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or Secondly.--Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alternation; or Thirdly.--Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration. Explanation 1 - A man's signature of his own name may amount to forgery.

Explanation 2 - The making of a false document in the name of a fictitious per-

son, intending it to be believed that the document was made by a real person, R/CR.MA/9052/2020 ORDER or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery. [Note: The words 'digital signature' wherever it occurs were substituted by the words 'electronic signature' by Amendment Act 10 of 2009]." The condition precedent for an offence under sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be said to have made and executed false documents, in collusion with the other accused.

10. An analysis of section 464 of Penal Code shows that it divides false documents into three categories:

10.1) The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed. 10.2) The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

10.3) The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.

11. In short, a person is said to have made a 'false document', if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practicing deception, or from a person not in control of his senses.

12. The sale deeds executed by first appellant, clearly and obviously do not fall under the second and third categories of 'false documents'. It therefore remains to be seen whether the claim of the complainant that the execution of sale deeds by the first accused, who was in no way connected with the land, amounted to committing forgery of the documents with the intention of taking possession of complainant's land (and that accused 2 to 5 as the purchaser, witness, scribe and stamp vendor colluded with first accused in execution and registration of the said sale deeds) would bring the case under the first category. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes that the prop-

R/CR.MA/9052/2020 ORDER erty actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of 'false documents', it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither section 467 nor section 471 of the Code are attracted. Section 420 IPC.

9. Thus, as per the law enunciated by the Apex Court no offence can be said to have been committed by the petitioner who is arraigned as an accused no.4 in the impugned FIR. The contents of the FIR do not reveal any offence of forgery. The complainant has only alleged that the petitioner has executed the sale deed with the accused no.3. The investigation also does not in any manner establish the complicity of the petitioner in the offence of forgery or in the offence of cheating.

10. With regard to the offence under section 420 of the IPC is concerned, it appears that the accused no.3 had entered into multiple sale transactions with other persons including the present petitioner. When the petitioner came to know that he was cheated by the accused no.3, he filed a complaint against him before the SIT on 5.12.2018. Moreover, the complainant on realizing that he was cheated, he had filed a complaint on 29.04 2019 and 1.05.2019 before the Police Inspector, Koth Police station and the SIT respectively. In both the complaints the complainant has not alleged anything against the petitioner, and has even mentioned his name. The allegations are made with reference to accused nos.1,2 and one Nayanaben Modi. Thus, no offence of cheating is also

established against the petitioner.

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11. Resultantly, this application is allowed. The impugned FIR being C.R.No.11192029200049 of 2020 registered with Koth Police Station, Ahmedabad (Rural), District Ahmedabad and all other consequential proceedings arising out of said FIR are hereby quashed and set aside qua the applicant-Accused no.4 only.

12. The application is allowed. Rule is made absolute. Registry is directed to intimate the concerned authority/ Court about the present order by sending a copy of this order through Fax message, email and/or any other suitable electronic mode.

13. Learned advocate for the applicant is also permitted to send a copy of this order to the concerned authority /Court through Fax message, email and/or any other suitable electronic mode.

Sd/-
(A. S. SUPEHIA, J)

NEHA GUPTA /// VISHALMISHRA