

Gujarat High Court

4 Whether This Case Involves A ... vs State Of Gujarat & on 28 April, 2017

R/SCR.A/1772/2013

CAV JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION NO. 1772 of 2013

FOR APPROVAL AND SIGNATURE :

HONOURABLE MR.JUSTICE N.V.ANJARIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? No 2 To be referred to the Reporter or not ? No 3 Whether their Lordships wish to see the fair copy of the judgment ? No 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of No India or any order made thereunder ?

===== SHRI  
KANTIBHAI RAVJIBHAI SOLANKI....Applicant(s) Versus STATE OF GUJARAT &  
1 . . . . R e s p o n d e n t ( s )  
===== Appearance:

MR P P MAJMUDAR, ADVOCATE for the Applicant(s) No. 1 MR NK MAJMUDAR, ADVOCATE for  
t h e R e s p o n d e n t ( s ) N o . 2  
===== CORAM:  
HONOURABLE MR.JUSTICE N.V.ANJARIA Date : 28/04/2017 CAV JUDGMENT Rule, returnable  
forthwith. Learned HC-NIC Page 1 of 10 Created On Wed Aug 16 02:55:14 IST 2017 Additional  
Public Prosecutor Mr.L.B. Dabhi waives service of notice of Rule on behalf of the respondent- State,  
whereas learned advocate Mr.N.K. Majmudar waives service of notice of Rule on behalf of the  
respondent No.2-original complainant.

1.1 By filing the present petition, the petitioner-original accused No.2 has prayed for quashing the  
First Information Report bearing Crime Register No.I-146 of 2013 registered on 25th April, 2013  
with Gorva Police Station, Vadodara City.

2. The First Information Report in question alleges offences under Section 406, 420, 465, 467, 468,  
471 and 114 of the Indian Penal Code, 1860.

3. Adverting to the contents of and allegations in the First Information Report, they related to the transactions in respect of land bearing revenue Survey Nos.144 and 156, T.P. Scheme Final Plot No.633 of Village Gorva, Taluka District Vadodara. It was stated that the original owner of the land was one Desaibhai Babubhai, who by executing a Will, gave the land to his daughter Punjiben. Upon death of Punjiben, by law of succession, land property came to one Mohanbhai Harmanbhai Padhiyar and Mangalbhai Harmanbhai Padhiyar. One third share from the property was given to Savitaben Padhiyar by said Punjiben by way of Will, as the Punjiben had no daughter and Savitaben had been staying with Punjiben during her life time.

3.1 The complainant stated that he was contacted by said Savitaben Padhiyar and her family members for HC-NIC Page 2 of 10 Created On Wed Aug 16 02:55:14 IST 2017 sale of the said land in the year 1992, upon which the complainant showed interest in purchasing the same. A registered Banakhat dated 14TH May, 1992 was executed and the amount towards consideration was paid. It appears that the first informant filed a Regular Civil Suit No.625 of 1991 against said Savitaben for compliance of the conditions of the Banakhat. The suit was compromised outside the Court and a consent decree was passed. It was alleged that entire share of amount of consideration to the Savitaben was paid to her and a writing dated 29th September, 1998 was also executed by said Savitaben and her family members acknowledging the receipt of money. It appears that another Civil Suit No.1137 of 1998 was also instituted, which too was compromised. Thereafter, in pursuance to the agreement dated 14th May, 1992, two sale deeds came to be executed in respect of the land property.

3.2 The F.I.R. alleged that when the complainant wanted to construct over the property and for that purpose gave an advertisement for title-clearance certificate in the newspaper on 30th September, 2012, objection was received from the present applicant. In favour of the present applicant said Savitaben had executed agreement to sell dated 14th June, 2007 which was a registered agreement. The complainant therefore claimed that though earlier she had become owner of the property, agreement to sell was executed by said Savitaben in favour of the applicant.

3.3 The present applicant who is the holder of the agreement to sell dated 14th June, 2007 is HC-NIC Page 3 of 10 Created On Wed Aug 16 02:55:14 IST 2017 arraigned as accused No.2 in the First Information Report. Accused No.1 is Savitaben. It is to be appreciated whether for the offences under Sections 406, 420, 465, 467, 468, 471 and 114 of the Indian Penal Code, 1860, the arraignment of the present applicant in the F.I.R. could be said to be proper and whether the offences alleged are made out.

4. Heard learned advocate Mr.P.P. Majmudar for the petitioner, learned Additional Public Prosecutor for respondent No.1-State and learned advocate for respondent No.2-original complainant, at length.

4.1 Learned advocate for the petitioner submitted that offences as alleged were not made out and the essential ingredients for Sections 467, 468, 471, IPC, are not at all satisfied, nor that of Sections 406, 420, IPC are met with. In order to make good the submission that the offences of forgery etc. was not made out, learned advocate for the petitioner relied on decision of the Supreme Court in

Parminder Kaur v State of Uttar Pradesh [(2010) 1 SCC 322]. Also pressed into service, was the decision of this Court in Maninder Singh Jolly v State of Gujarat being Criminal Miscellaneous Application No.9849 of 2013 decided on 02nd September, 2016. A decision of this Court in Prakash Ramchandra Barot v State of Gujarat [2011 (3) GLH 2011] was put-forth by highlighting paragraph 17 of the judgment for submitting that offence was forgery was not made out.

4.2 On the other hand, learned Additional Public HC-NIC Page 4 of 10 Created On Wed Aug 16 02:55:14 IST 2017 Prosecutor opposed the prayer for quashment submitting that the averments and the attendant facts could be said to be making of the offences alleged. The prayer for quashment was also opposed by learned advocate for the complainant, who relied on decisions of the Supreme Court in Vijayander v State of Rajasthan [(2014) 3 SCC 389] to submit that offence of cheating and criminal conspiracy was made out as was apparent from the conduct of the applicant-accused. Learned advocate further relied on the decisions in Teeja Devi alias Triza Devi v State of Rajasthan [(2014) 15 SCC 221, paragraphs 5, 7 and 9]; N.Soundaram v P.K. Pounraj [(2014) 10 SCC 616, paragraphs 13 and 14], HMT Watches Limited v M.A. Abida [(2015) 11 SCC 776]; Ganga Dhar Kalita v State of Assam [AIR 2015 SC 2304]; Madan Razak v State of Bihar [AIR 2016 SC 122]; he further relied on decision of this Court in M/s.Indian Oil Corporation v M/s.NEPC India Limited [2006(2) GLH 753]. Learned advocate for the complainant thereby submitted that there was no case for exercising inherent powers under Section 482, Cr.P.C. which the Court would exercise in rare cases and with circumspection and that the present was not the case of that category.

5. On the premise of the factual allegations as noted above, the offences alleged included offence of criminal breach of trust under Section 405 punishable under Section 406, IPC. Another offence alleged was that of cheating and dishonestly inducing delivery of property. The offence alleged also included one under Section 465, IPC which is forgery as defined under HC-NIC Page 5 of 10 Created On Wed Aug 16 02:55:14 IST 2017 Section 463, under Section 467, IPC which is forgery of valuable security etc., under Section 468, IPC which is the offence of forgery for the purpose of cheating as well as under Section 471, IPC which provides for an offence for using as genuine a forged document. Essential ingredient for the offence under Section 405, 406 is dishonest intention of converting property over which dominion is exercised, to one's own use or dishonestly disposing of the property. The offence of forgery as defined in Section 463 says that whoever makes any false document with intent to cause damage or injury to any person or public or to support any claim or title or with an intent to commit fraud etc., commits a forgery. Making a false document which is part of offence of forgery, is by itself a separate offence defined under Section 464, IPC.

5.1 While arguing for quashment of the F.I.R., by submitting that on a bare reading of the allegations, the offences under the aforesaid Sections were not made out, an aspect which was outrightly highlighted by way of contention by learned advocate for the petitioner, was that there was a large delay in lodging the F.I.R. The F.I.R. was lodged on 24th May, 2013 and the offences alleged were stated to have occurred from 14th June, 2007. In other words, there was inordinate delay of six years in lodging the F.I.R. A delay, when inordinate and unexplained, defeats and displaces credibility of F.I.R.

5.2 In *Kishan Singh v Gurpal Singh* [(2010) 8 SCC 775] the Supreme Court observed on the aspect of delay HC-NIC Page 6 of 10 Created On Wed Aug 16 02:55:14 IST 2017 in lodging the F.I.R. as under.

"In cases where there is a delay in lodging a FIR, the Court has to look for a plausible explanation for such delay. In absence of such an explanation, the delay may be fatal. The reason for quashing such proceedings may not be merely that the allegations were an afterthought or had given a coloured version of events. In such cases the court should carefully examine the facts before it for the reason that a frustrated litigant who failed to succeed before the Civil Court may initiate criminal proceedings just to harass the other side with mala fide intentions or the ulterior motive of wreaking vengeance on the other party. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the criminal court. The court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse of the process of law in the facts and circumstances of the case. (vide : *Chandrapal Singh and Ors. v. Maharaj Singh and Anr.*, AIR 1982 SC 1238; *State of Haryana and Ors. v. Ch. Bhajan Lal and Ors.*, AIR 1992 SC 604; *G. Sagar Suri and Anr. v. State of U.P. and Ors.*, AIR 2000 SC 754; and *Gorige Pentaiah v. State of A.P. and Ors.*, (2008) 12 SCC 531)."

5.3 The submission on behalf of the petitioner which could be countenanced was that from the entire set of allegations mentioned in the F.I.R., the offence of forgery was not made out. There was no making of a false document. The document executed was a real document but what is alleged is that despite earlier sale, subsequent sale deed was executed in favour of the petitioner-accused. None of the ingredients of Sections 463, 467, 468 or 471, IPC can be said to have been made out. Nor it is possible to view the commissioning of offence under Section 406, IPC. There was no entrustment of a property to bring into offence the said offence. The offence of cheating HC-NIC Page 7 of 10 Created On Wed Aug 16 02:55:14 IST 2017 under Section 420 was consequentially roped into, which too did not surface from the allegations and no part of essentials of the said offence could be said to be present, when the allegations in the F.I.R. read and analysed.

5.4 In *Parminder Kaur* (supra), the Apex Court after reproducing the facts of the aforesaid offences, observed as under which applies to the present case as well.

"The last offence which is alleged against the appellant is Section 471 IPC. This section is not applicable in the case of the appellant for the simple reason that we have already found that there was no dishonest intention on the part of the appellant nor had she acted fraudulently. This Section applies only in case of the use of a forged document as a genuine document. Since we have found that there is no element of forgery at all, there would be no question of there being any valid allegation against the appellant."

5.5 Similarly in Prakash Ramchandra Barot (supra), this Court stated, "17. 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."

6. Besides the above, the entire nature of transaction with reference to which the criminal offence is alleged were apparently of civil nature. The basic contours of the criminal offences sought to be alleged in the F.I.R. was of civil dispute. The principle is well settled that criminal proceedings HC-NIC Page 8 of 10 Created On Wed Aug 16 02:55:14 IST 2017 are not misused for settling the scores or pressurising the parties to settle the civil disputes. In Y.V. Jose v State of Gujarat [(2009) 3 SCC 78], was a case where a dispute between the appellants and respondent No.2 was regarding supply of a machine. The Apex Court observed considering the facts of the case that matter essentially involved dispute of civil nature and may not be allowed to be resorted to as a short-cut. In Rajeeb Ranjan v R. Vijaykumar [(2015) 1 SCC 513] facts were that criminal complaint was filed after the complainant lost civil litigation, which was termed as misuse and abuse of process of law.

6.1 The Supreme Court in Paramjeet Batra v State of Uttrakhand [(2013) 11 SCC 673] observed, "While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court." (Para 12) 6.1.1 It was then stated, "A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court."

(Para 12)

7. In view of the foregoing discussion as well as the reasons and grounds stated above, the petition deserves to be allowed. The F.I.R. bearing Crime HC-NIC Page 9 of 10 Created On Wed Aug 16 02:55:14 IST 2017 Register No.I-146 of 2013 registered with Gorva Police Station, Vadodara City on 24th May, 2013 and the consequential proceedings are hereby quashed and set aside.

Rule is made absolute.

(N.V.ANJARIA, J.) Anup HC-NIC Page 10 of 10 Created On Wed Aug 16 02:55:14 IST 2017