

Chirag M. Pathak vs Dollyben Kantilal Patel on 15 November, 2017

Equivalent citations: AIR 2017 SUPREME COURT 5787

Author: Abhay Manohar Sapre

Bench: Abhay Manohar Sapre, R.K. Agrawal

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL Nos.1947-1956 OF 2017
(ARISING OUT OF SLP (Crl) Nos.1218-1227/2014)

Chirag M. Pathak & Ors.
Etc.Etc.

....Appellant(s)

VERSUS

Dollyben Kantilal & Ors.

....Respondent(s)

With

Special Leave Petition (Crl.) Nos.869-878 of 2014

JUDGMENT

Abhay Manohar Sapre, J.

- 1) Leave granted.
- 2) These appeals are filed by appellants against

the common judgment dated 17.10.2013 passed by the High Court of Gujarat at Ahmedabad in Special Criminal Application Nos.1265, 1266, 1267, 1268, 1269, 2930, 2931, 2932, 2933 and 2934 of 2013 whereby the High Court allowed the applications filed by the respondents herein under Section 482 of Code of Criminal Procedure Code, 1973 (hereinafter referred to as “the Code”) and quashed the five First Information Report (in short “the FIR”) Nos.50/2013, 51/2013, 52/2013, 53/2013 and 54/2013 dated 19th February, 2013.

3) Facts of the case and the issues involved in these appeals are short. They, however, need mention hereinbelow to appreciate the controversy.

4) Six FIRs were registered in different Police Stations in the State of Gujarat against six different Co-Operative Housing Societies for commission of various offences alleged to have been committed by the President, Office Bearers and other persons of the six Societies under Sections 406, 409, 420, 465, 467, 468, 471, 120-B and 477-A of the Indian Penal Code, 1908 (hereinafter referred to as "IPC"). The details of these six FIRs are as under:

Sr. Date Name & Survey Period & Name of Name of No & FIR Regn. of No. & Place of accused victims . No. Society Village offence 1 CR Balasinor S. Since Kantilal Ranjitrai 1-5/2 Society – No.320, 1984 to Ambalal Joshi 012 Plot 320/1, till Patel, dated No.A/71 329, 21.5.12 Dollyben 21.5.2 GH-11136 332 Kantilal 012 Village - Patel, registe Pipaliya Ashok red Desaiibhai with Patel, Gandh Sachin i Rajendra Nagar Patel, CID Haresh Crime Shashikant PS Patel, Jashbhai Shanker-b hai Patel

2 C.R.I- Balasinor S.No.320, 20.7.11 Kantilal Kanchan-la 50/20 Society 320/1, to Ambalal l Bhatt, 13 GH-11136 329, 332 28.9.11 Patel, Arvind dated Village-Pi at 60, Dollyben Kanchan-la 19.2.2 paliya Vimal Kantilal l Bhatt, 013 Area– 1, Society, Patel, Vasant R. registe 14, 426, Makar-p Haresh Chavda, red sq. mt. ura Shashikant Indiraben with Patel, Vikas Ratilal Makar Ramesh-m Adhiya, pura ore Manjula-be P.S. Chandu-bh n Arvind Vadod ai, kumar ara Jashbhai Shah, Shanker-b Nainaben hai Patel Suresh Kumar Parikh, Jasvant-bh ai Kodarlal Parikh, Usnas Navin Chandra Kacheriya Ravjibhai A. Patel, Bipin Chandra A. Patel, Parixit Ambalal Patel, Naresh kumar C. Patel, Kanubhai A. Vyas, Ratilal A. Patel, Sunil kumar Prem kumar Jethmal-an i, Rekha S. Patel 3 C.R.I- Valkesh-w S.No.45 15.7.11 Kantilal Dhananj- 51/20 ar Society & 47 to Ambalal ay 13 dt. GH-11133 Village 29.9.11 Patel, Vallabh-b 19.2.1 Kamla-p at 60, Dollyben hai Patel, 3 ura Vimal Kantilal Jayaben registe Area-49, Society, Patel, A. Patel, red 979 sq. Makar-p Sachin Mayank with mt. ura Rajendra N. Patel, Makar Anuben, Nikhilhar-

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| Jashbhai | Dipa |
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| bhai Patel | Jayvanti-b |
| | en |
| | Sevantilal |
| | Vaan |
| | Hansaben |
| | Ratilal |
| | Shah, |
| | Jayshree |
| | Suresh |
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| | | | | | | Pragna-be n Manoj-bh ai Mehta, Bachub-b hai A. Patel, Haresh B. Brahm-bh att, Mukesh, C Patel, Kokila A. Patel, Rajesh M. Patel, Babu-bhai S. Patel, Arvind-bh ai P.Amin, Prakash-b hai Ishwar-bh ai Patel, Bipin-cha ndra Ambalal Patel Prem kumar Jagtram Jeth-mala ni, Hansaben V. Thakkar, Vidyaben N. Patel, Champa-b en S. Patel, Suresh-bh ai A. Vyas Suman-b hai A. Patel, Balkrush- na M. Pandya, |
| 4 | C.R.I- 52/20 13 dt. 19.2.1 3 registe red with Makar pura P.S. Vadod ara | Parla Society GH-11134 | S.No.54 Village Kamla-p ura Area-69, 706 sq. mt. | 13.7.11 to 29.9.11 at 60, Vimal Society, Makar-p ura | Kantilal Ambalal Patel, Dollyben Kantilal Patel, Jitendra Shashi-ka nt Patel Bhanu-be n Kantilal Patel Jashbhai Shankar- bhai Patel | |

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| 5 | C.R.I- 53/20 13 dt. 19.2.1 3 registe red with Makar pura P.S. Vadod ara | Alkapuri Society GH-11135 | S.No.46, 48 & 49 Village Kamla-p ura Area-94, 900 sq. mt. | 11.7.11 to 29.9.11 at 60, Vimal Society, Makar-p ura | Kantilal Ambalal Patel, Dollyben Kantilal Patel, Ashok-bh ai Desaibhai Patel, Bhartiben Ashok-bh ai Patel, Jashbhai Shanker- bhai Patel, Chandu-b hai | Patel, Sarojben C Patel, Arvind-bh ai M. Shah Kokila Sirish Modi, Ketan Dinesh Bhansali, Jagdish J. Kapadia, Vinodini Kapadia, Gautam Kapadia, Anjana Kapadia, Bhariben Bhansali, Girish Doshi, Asish Shah, Suresh Kantilal Shah, Arvind-bh ai, Vallabh-b hai Patel, Vallabh-b hai Tribhuvan -bhai Patel, Vinubhai B. Patel, Kanchan- bhai Patel, Jashbhai Ravji-bhai Patel, |
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| 6 | C.R.I- 54/20 13 dt. 19.2.1 3 registe red with Makar pura P.S. Vadod ara | Kheta-wa di Society GH-11486 | S.No.50, 51, 52A, 52B Village Kamla-p ura Area-96, 519 sq. mt. | 25.7.11 to 29.9.11 at 60, Vimal Society, Makar-p ura | Kantilal Ambalal Patel, Dollyben Kantilal Patel, Kishore N Bhatt, Dilip Manibhai Patel, Jashbhai Shanker- bhai Patel | Rita C Kapadia, Vana Kulin Ghatalia, Vaishali Ghatalia, Kundan Doshi, Jaimit Doshi, Upendra Ashabhai Patel, Bipinbhai Chotabhai Patel, Dahya-bh ai B. Patel, Kiranbhai J. Parikh, Arvind-bh ai Chotabhai Patel, Manubhai Chotabhai Patel, Ramesh-b hai Shana-bh ai, Harshad- bhai |
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herein, who are members of one family), felt aggrieved by the registration of above-mentioned five FIRs (item 2 to 6) which had implicated them for commission of several offences, filed Criminal Applications under Section 482 of the Code in the High Court of Gujarat and sought quashing of the above-mentioned five FIRs.

6) The challenge was essentially founded on the ground that filing of the first FIR(1Cr. No.5/2012 dated 21.05.2012) appearing at S.No.1 above takes care of remaining five FIRs and, therefore, the remaining five FIRs are wholly uncalled for and should not have been registered inasmuch as the five FIRs are nothing but repetition of the first FIR and hence all the five FIRs deserve to be quashed.

7) In other words, the contention of the accused persons before the High Court was that the subsequent registration of five FIRs after registration of first one was nothing but repetition of first FIR inasmuch as all the five FIRs are founded on the same allegations, which are part of the first FIR and, therefore, accused persons cannot be subjected to suffer five more prosecution cases in relation to the same offences on the strength of five FIRs once they are made to suffer the prosecution in relation to offences on the strength of first FIR.

8) It was urged that once the investigation in respect of first FIR is over and charge-sheet pursuant thereto is filed in the concerned Court, it would take care of remaining five FIRs and it is for this reason the remaining five FIRs are wholly uncalled for.

9) The State opposed the Criminal Applications. It was, inter alia, contended that having regard to the nature of allegations made in each FIR in relation to the commission of the several offences, no case is made out to quash any FIR out of five and, therefore, all the six FIRs must be allowed to be investigated independently of one another. After completion of the investigation, charge-sheets are allowed to be filed in each case against all the accused persons involved in the scam in accordance with law so that each case is brought to its logical end in the Court of law against all the accused persons.

10) The High Court found merit in the contention of the accused persons and, by impugned judgment, allowed their Criminal Applications and while quashing the five FIRs passed the

following directions in the impugned order:

“In the light of the above discussion, the petitions succeed and are accordingly allowed. The first information reports registered vide Makarpura Police Station 1-CR.No.50/2013, 51/2013, 52/2013, 53/2013 and 54/2013 dated 19th February, 2013 are hereby quashed and set aside. As a consequence thereof, the investigation carried out pursuant to the second first information reports, shall be treated as part of the investigation carried out in respect of the 1st first information report and the entire record of the subsequent first information reports shall be forwarded to the st Investigating Officer of the 1 first information report, who shall consider the same and carry out investigation in respect of the detailed allegations made therein. Rule is made absolute accordingly.”

11) The appellants herein are the members of these Societies. They claim to be the victims of several illegal activities alleged to have been committed by the accused persons (respondents herein) in the affairs of the Societies and, particularly, those committed in relation to sale of the lands belonging to the Societies, siphoning off the funds of the Societies, falsification of the accounts of the Societies etc.

12) The appellants, felt aggrieved of the impugned judgment, which resulted in quashing of 5 FIRs, have filed these appeals by way of special leave before this Court.

13) Heard Mr. Huzefa Ahmadi, learned senior counsel for the appellants and Mr. Mohit Choudhary, learned counsel for the respondents.

14) Having heard the learned counsel for the parties and on perusal of the record of the case, we are constrained to allow the appeals, set aside the impugned judgment and dismiss the Criminal Applications filed by the accused persons (respondents herein) under Section 482 of the Code out of which these appeals arise.

15) The short question which arises for consideration in these appeals is whether the High Court was justified in quashing the five FIRs appearing at S.Nos. 2 to 6 extracted above.

16) We have perused all the six FIRs with a view to find out as to whether the grievance urged by the accused persons is made out on facts or not. Having perused, we find ourselves unable to agree with the reasoning and the conclusion arrived at by the High Court, which led to quashing of the five FIRs.

17) We, however, do not consider it proper to give our detailed reasoning as it may cause prejudice to all parties concerned because the investigation is not yet complete and the trial in the first FIR has not yet started except to observe that there appeared no justifiable reason for the High Court to quash the five FIRs by taking recourse to the inherent powers under Section 482 of the Code.

18) We find that the High Court had labored hard when it devoted 46 pages in examining the factual issues involved in six cases, appreciated the allegations of FIRs like an Appellate Court to some extent and then reached to a conclusion that all the six FIRs were based on identical facts and the allegations contained therein overlap and, therefore, the first FIR alone will survive for investigation whereas remaining five FIRs would not survive and merge in the first FIR.

19) We do not agree with the manner, reasoning and the conclusion arrived at by the High Court in the impugned judgment.

20) We find that all the six Co-Operative Societies against whom the afore-mentioned FIRs were registered are different, their members are different, their area of operation is different, the lands which were sold/transferred are also situated in different areas, the lands were also sold/transferred to different parties on different dates for different sums, the accounting books are different, the persons involved in the falsification of the accounts of every Society are different etc. etc.

21) In short, having regard to the totality of the factual allegations made for constituting the commission of several offences in relation to every Co-Operative Society, it is not possible to hold that all the FIRs are overlapping on one another and that first FIR alone will be sufficient to take care of the remaining five FIRs.

22) There may be some overlapping allegations in the FIRs but that is due to myriad reasons and one reason could be that all the Co-operative Societies were engaged in the same business of sale/purchase of housing and the plots of land which were sold to different persons in different areas by same accused persons due to their involvement in the affairs of all Co-Operative Societies. However, these facts were not by themselves sufficient to quash the five FIRs at the stage of investigation itself.

23) In our view, such issues and many more, namely, the nature and manner of conspiracy, whether it was confined to each Society or there was one or larger conspiracy, how and in what manner it was accomplished, who were parties to it, who were those persons who secured financial benefits, what was the modus operandi for mis-appropriation of the funds of each Society and how the funds were siphoned off from each Society etc., need detailed investigation with respect to each Cooperative Society. Once the investigation is complete in relation to each Society, the same would form part of the separate charge-sheet for being proved with the aid of evidence in a competent Court against each Society and persons involved in the scam. It is for the Court to examine the factual issues arising in every case by appreciating the evidence once adduced in support thereof and pass appropriate orders in accordance with law.

24) The High Court, in exercise of its powers under Section 482 of the Code, cannot undertake a detailed examination of the facts contained in the FIRs by acting as an

Appellate Court and draws its own conclusion. It is more so when investigation in other Societies is not yet complete.

25) In our considered opinion, it is only when on reading the FIR, a sheer absurdity in the allegations is noticed and when no prima facie cognizable case is made out on its mere reading due to absurdity in the allegations or when facts disclose prima facie cognizable case and also disclose remarkable identity between the two FIRs as if the first FIR is filed second time with no change in allegations then the Court may, in appropriate case, consider it proper to quash the second FIR. Such is not the case here.

26) Indeed, in our view, few distinguishing factual allegations mentioned above are enough to repel the challenge made by the accused persons to the impugned FIRs and the same should have been made basis to dismiss the Criminal Applications of the accused persons.

27) We may, at this stage, apposite to mention a Three Judge Bench decision of this Court in State of West Bengal & Ors. vs. Swapan Kumar Guha & Ors. (AIR 1982 SC 949) wherein this Court examined somewhat a similar question in the context of the powers of the Court.

28) The learned Chief Justice, Y.V Chandrachud and Justice A.N. Sen, speaking for the Bench in their concurring opinion held as under:

“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.”

29) We apply the aforesaid principle which, in our opinion, applies to the facts of the case on hand and accordingly decline to quash the impugned FIRs.

30) Learned counsel for the respondents (accused) however, vehemently tried to support the impugned judgment and took us through the entire factual allegations of all six FIRs. It was his submission that on perusal of the impugned FIRs, there does exist overlapping of the offences in the FIRs on identical allegations with no change in any of the six FIRs except repetition of the words and hence the High Court was right in quashing the five FIRs.

31) We are afraid to accept this submission of learned counsel for the respondents (accused).

Having noticed few significant distinguishing features in six FIRs mentioned above, the submission has no merit.

32) In view of foregoing discussion, we cannot concur with the reasoning and the conclusion arrived at by the High Court in the impugned judgment. The appeals thus succeed and are allowed. The impugned judgment is set aside.

33) It is held that all the six FIRs filed against the respondents (accused persons) are legal and proper and each have to be given effect for making proper and full investigation in relation to the offences alleged in each FIR. The Investigating Officer would now speed up the investigation in relation to the affairs of each Co-operative Society and on its completion file charge-sheet in each case in accordance with law in a competent Court.

34) Needless to say that when all the six cases are filed in the concerned Courts, they would be clubbed together and tried by one competent Court in accordance with law.

35) The parties are at liberty, at an appropriate stage, to move to the High Court with a prayer to club and then transfer all the six cases to one competent Court. The High Court would accordingly pass appropriate orders of clubbing and transferring all the six cases to one Court as it may deem fit and proper to enable the said Court to dispose of all the six cases in accordance with law. Special Leave Petition (Crl.) Nos.869-878 of 2014 In view of the above judgment rendered in appeals arising out of S.L.P.(Crl.)Nos.1218-1227 of 2014, these special leave petitions are disposed of.

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

November 15, 2017