

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 4483 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
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 India or any order made thereunder ?	No

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FEROZE FALIBHAI CONTRACTOR

Versus

STATE OF GUJARAT & ANR.

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Appearance:

MR I.H. SYED, SENIOR ADVOCATE WITH MR P P MAJMUDAR(5284) for the Applicant(s) No. 1

MR SURAJ B MATIEDA(10499) for the Applicant(s) No. 1

MR SHALIN MEHTA, SENIOR ADVOCATE WITH MR. NISARG N JAIN(8807) for the Respondent(s) No. 2

MR BHARGAV PANDYA, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 30/05/2024

ORAL JUDGMENT

1. This application is filed under Article 226 of the Constitution of India read with Section 482 of the Cr.P.C., whereby applicant – original

accused no. 1 – Firoz Falibhai Contractor, resident of Vadodara, is seeking quashment of the FIR being CR. No.11196008200983 of 2020 registered with J.P. Nagar Police Station, Vadodara for the offences punishable under Sections 177, 181, 406, 465, 467, 471 and 212 read with Section 114 of the IPC and Section 6(d) of the Gujarat Prohibition of Transfer of Immovable Property and provision of Protection of Tenants from Eviction from the Premises in Disturbed Areas Act, 1991 (herein after referred as ‘Disturbed Areas Act’).

2. This Court has heard learned Senior Counsel Mr. I.H. Syed assisted by Mr. Panthil Majmudar, learned advocate appearing for and on behalf of the applicant – accused, Mr. Shalin Mehta, learned Senior Counsel assisted by Mr. Nisarg Jain, learned advocate appearing for and on behalf of original informant – private respondent and Mr. Bhargav Pandya, learned APP appearing for the respondent State.

3. Brief facts giving rise to file present application are that:

The applicant accused – Firoz Contractor vide registered sale deed dated 07.02.2018 purchased property in question bearing plot No. 9 situated at Samarpan Society, Vasna Road, Tandalja, City Vadodara.

The area in which the property is situated is declared as ‘disturbed area’ and any party intend to transfer the property by way of sell etc, the prior permission of the Deputy Collector under Section 5 of the Disturbed Areas Act is necessary. Section 5 provides that, subject to provisions of sub-section (3), no immovable property

situated in the disturbed area shall during the period of subsistence of the notification issued under sub-section (1) of Section 3 declaring such area to be the disturbed area, be transferred except with the previous permission of the Collector. The procedure for obtaining permission is provided in sub-section (3) of the Act, which says that, any person intending to transfer immovable property situated in a disturbed area may, within the prescribed period and in the prescribed form, make an application to the Collector for obtaining previous sanction under sub-section (1).

In light of the aforesaid statutory provisions, the application for obtaining previous sanction was filed on 26.02.2015. The Deputy Collector, Vadodara granted previous sanction on 21.09.2017. The NOC from Samarpan Housing Society was also obtained on 30.01.2015. The applicant accused vide registered sale deed dated 07.02.2018, purchased the said plot no.9 from the erstwhile owner Mr.Dashrathlal Panchal. The applicant accused while obtaining the previous sanction, submitted an affidavit and filled up the check-list, wherein he disclosed his caste/religion (Parsi) and also mentioned his residential address i.e. Faramji Compound, B/h. Railway Station, Alkapuri, Vadodara, as per the Government record.

After purchasing the said property, applicant Firoz Contractor did not want to retain the said property and decided to sell it to co-accused Firoz Mohammad Patel, Sabir Mohammad and Hanifa Mohammad Patel. As the property falls under the disturbed area, the previous sanction of the Deputy Collector, Vadodara was

necessary. The accused Firoz along with the proposed purchaser applied for previous sanction on 04.05.2019. He as well as purposed purchaser filled a check-list as well as submitted an affidavit as per the procedure laid down under the Rules. In the affidavit, the applicant Firoz did not mention his caste/religion. In the affidavit as well as check-list, he mentioned the address which is not his regular resident address. In such circumstances, considering the particulars and contents of the affidavit as well as check-list, the authority was of the view that the parties belong to Muslim Community and therefore, without inviting police inquiry, granted a previous sanction on 16.05.2019. Thereafter, the accused executed a registered sale deed dated 14.06.2019 in favour of co-accused Firoz Mohammad and others.

In the aforesaid facts and circumstances, the President of Samarpan Housing Society, Manish Malhotra, after getting the necessary documents and information through RTI, came to know that accused Firoz, with dishonest intention, by concealment of fact about his religion and furnishing a false document, mentioning therein the false address by which he created an impression that he belongs to a Muslim Community, obtained a previous sanction of the Deputy Collector and thereby, he allegedly committed the offence of criminal breach of trust, cheating and forgery.

The private respondent the President of the society, lodged an FIR on 30.08.2020 inter alia alleging that the accused was legally bound to furnish a true information, in relation to his religion

and/or his caste as well as the true address for in depth enquiry and despite of having knowledge about the procedure he intentionally made a false statement on oath and by concealing the necessary facts about religion and address, created an impression in the mind of the authority that he belongs to a Muslim Community and obtained a previous sanction. It is further alleged that application accused Firoz was having knowledge that the NOC from the society is necessary and must, as when he purchased the plot, he applied for NOC and the same was granted on 30.01.2015, however, for selling the said plot to the co-accused, he did not inform to the society about his intention as well as transaction and without obtaining the NOC, straightaway executed the sale deed in favour of co-accused. It is further alleged that at the time of first NOC issued by the society in favour of the accused, he made a promise and assured to the society and its members that as and when occasion arisen to sell the property, he will inform the society and get the NOC.

In such set of circumstances, it is alleged in the FIR that in order to obtain the previous sanction, by suppressing and concealing the true facts about his religion, the authority was misled while processing the application for granting previous sanction and by not getting NOC from the society and making a false statement on affidavit and by creating a document for address, the accused committed an offence of criminal breach of trust, cheating, forgery of the documents using as genuine.

Pursuant to said FIR, the investigation officer proceeded for

investigation and after collecting necessary documentary evidence and on recording the statement of the witnesses found a sufficient evidence against the accused for the offence punishable under Sections 177, 181, 406, 465, 467, 471, 212 read with Section 114 of the IPC and Section 6(d) of the Gujarat Prohibition of Transfer of Immovable Property and provision of the Disturbed Areas Act.

In the result, the chargesheet came to be filed on 02.06.2021, which has been culminated into criminal case no.18141 of 2020. In view of the filing of the chargesheet, the applicant by amending this petition, has also prayed for quashing of the proceedings of the criminal case.

4. Mr. I.H. Syed, learned Senior Counsel has submitted the following submissions:

(a) That the allegations made in the FIR and facts emerging from the papers of the chargesheet do not reveal the commission of the offence of criminal breach of trust, cheating and forgery of the documents. The criminal machinery is being used with *malafide* intention and the same is nothing but a gross misuse of process of law and Court. The applicant accused and the co-accused submitted an application for previous sanction as the property falls under the disturbed area and filled up a check-list as provided with the sworn affidavit. The authority concerned after verification of the contents of the application granted a sanction as provided under the Disturbed Areas Act. The authority concerned or the private respondent, till date, has not

initiated any proceedings to cancel the sanction granted by the authority.

- (b) That, the entire proceedings for obtaining sanction was being done according to law and after thorough investigation by the concerned, the previous sanction for execution of sale deed as provided under the Disturbed Areas Act was granted.
- (c) That Samarpan Cooperative Housing Society is not cooperative housing society but it has been created for general maintenance of the society and thus, the society being a service society, the NOC from the society is not mandatory.
- (d) That the religion or caste is not relevant or material for the authority to grant a previous sanction, because the paramount consideration is to see whether the sale is for a fair consideration and with free consent.
- (e) That the non-disclosure of the caste by way of affidavit or otherwise would not by itself be an offence either under the penal law or under the provisions of the Disturbed Areas Act.

5. In the aforesaid contentions raised herein, learned Senior Counsel has submitted that the allegations made in the FIR and the chargesheet case papers, even if accepted to be true in entirety do not disclose ingredients of offence of criminal breach of trust, forgery as none of the ingredients of the offence are attracted.

6. So far as offences under Sections 177 and 181 of the Indian Penal Code are concerned, it was submitted that there is a legal bar against the initiation of proceedings. Referring to Section 195(1) of Code of Criminal

Procedure, 1973, it was submitted that the Trial Court has no jurisdiction to take cognizance of the offence punishable under Sections 172 to 188 of the Indian Penal Code, except the complaint in writing filed by the public servant concerned. Thus, in view of the statutory bar to take cognizance of the offence, the Trial Court could not have taken cognizance of the offence punishable under Sections 177 and 181 of the Indian Penal Code.

7. It was submitted that the charge under Section 6(d) of the Disturbed Areas Act is not sustainable in law as on the date of FIR i.e. 30.08.2020, the amended Section 6(d) was not came into force.

8. Lastly, it was submitted that where the allegations do not *prima facie* constitute any offence or make out a case against the accused and considering the allegations made by the President of the Society which seems to be inherently improbable and the same has been manifestly attended with *malafide* intention, this is a fit case to exercise inherent powers to prevent the misuse the process of the law and Court.

9. On the other hand, learned Senior Counsel Mr.Shalin Mehta, appearing for and on behalf of the private respondent – informant has submitted that the applicant accused was aware about the procedure for obtaining a previous sanction, as provided under the Disturbed Areas Act. On the first occasion i.e. when he purchased the said property, the facts about his caste and religion and true address disclosed by him on affidavit. Based on this input, the thorough inquiry was undertaken by the Deputy Collector. In the second transaction of the sale, the applicant accused while obtaining previous sanction of the Deputy Collector for the sale of the property which falls under the Disturbed Areas Act,

intentionally did not disclose his caste Parsi and also furnished a false address viz. Tarsali, Vadodara, which is mainly dominated by Muslim Community. In such circumstances, in order to get a previous sanction under the Disturbed Areas Act, by practicing deception and concealing material facts, the applicant accused allegedly committed the offence of criminal breach of trust, cheating and fraud.

10. It was submitted by learned Senior Counsel that, the NOC of the society is a pre-condition, as earlier occasion, the applicant obtained the NOC from the society, however, in the second sale which allegedly executed in favour of the co-accused who are belonged to the Muslim Community, the applicant was aware that the society will not issue NOC because of the transaction to the Muslim Community, he intentionally did not obtain the NOC from the society and despite repeated requests by the society to pay the maintenance and furnished the particulars of the transaction, the applicant did not heed the request. This shows the conduct of the applicant accused as from the inception of the sale transaction, he having a fraudulently intention to cheat the society and the authority concerned.

11. In view of the aforesaid contentions, as raised by learned Senior Counsel Mr.Mehta, he submitted that the allegations made in the FIR and chargesheet case papers *prima facie*, make out a case for the offences alleged, and therefore, considering the peculiar facts and circumstances of present case, at this stage, the disputed question of facts which are tribal issue cannot examine, by exercising inherent powers as it is to be tried and tested by the Trial Court. Lastly, he would urge that the police has filed the chargesheet in the matter and case is at the stage of framing of

charge and in that view of the matter, the alternate remedy is available to raise the issue at the appropriate stage.

12. On the other hand, learned Additional Public Prosecutor Mr.Bhagav Pandya for the respondent – State, adopting the arguments made by learned Senior Counsel Mr.Mehta for the private respondent, has contended that the applicant accused had furnished his false address and produced it by forging the document and in the affidavit, he concealed his facts of his caste, whereby he played a fraud and deception and created and impression in the mind of the authority that the parties are belonged to Muslim Community. That the accused applicant did not inform the society about the transaction. In the year 2017, when he purchased the property, the accused promised to the office bearers of the society that as and when the occasion arises for sale of the property, he will inform and get the NOC from the society. Thus, considering the conduct and attitude of the applicant accused, it *prima facie* established that on the very inception of the transaction, his intention was cheated the society.

13. Having regard to the facts and circumstances of present case, the question arises for consideration is whether the material on record *prima facie* constitute any offences against the applicant accused ?

14. The applicant accused has been charged with the offence punishable under Sections 406, 465, 467, 471, 177, 181 of the Indian Penal Code and Section 6(d) of the Disturbed Areas Act. It is not in dispute that a property in question i.e. plot no.9 of Samarpan Society falls under the disturbed area. If any person intends to sell his or her property which falls under the disturbed area, the prior permission of the Deputy

Collector under the Disturbed Areas Act is necessary. It is not in dispute that the applicant accused purchased the said plot no.9 by way of registered sale deed dated 07.02.2018. The applicant is belonged to Parsi Community. The said purchased transaction was between Parsi and Hindu Community. The application for previous sanction of sale was preferred by the erstwhile seller Mr.Dashrathlal Panchal, which was sanctioned on 21.09.2017. The NOC from Samarpan Society was also obtained in favour of applicant accused. In the affidavit submitted to the Deputy Collector, the applicant accused disclosed his caste Parsi and furnished his residential address as per the check-list, which was submitted to the authority. The police verification was done. In such set of circumstances, it *prima facie* appears that while obtaining a previous sanction of sale, as provided under the Disturbed Areas Act, the applicant accused did not disclose his caste in the sworn affidavit and despite his permanent resident at Faramji Compound, behind Railway Station, Alkapuri, Vadodara, he mentioned his address at Tarsali, Vadodara, which is mainly dominated by the Muslim Community. Thus, this Court is of *prima facie* view that, in order to get the previous sanction under the Disturbed Areas Act, the applicant by concealing the material facts, which has bearing on the decision making authority, intentionally, furnished false information, so as to deceived the authority. It is pertinent to note that the applicant was aware about the procedure and despite of this, he intentionally did not disclose the true facts. It is on record that when the applicant accused purchased the property, Samarpan Society had issued a NOC. However, when the accused decided to sell the property, he did not inform the society nor obtained any NOC despite of promise being given to the office bearers of the society. It is evident that

the society was unaware about the transaction and despite repeated request by the society to pay the maintenance as well as furnishing necessary particulars the applicant accused intentionally did not heed the request. In such set of circumstances and considering the peculiar facts and circumstances of present case, it cannot be said that no any offence is made out or do not *prima facie* constitute any offence against the accused.

15. It is the contention that the ingredient of criminal breach of trust and forgery are lacking in the facts of present case. To buttress the submissions, heavy reliance is placed on the case of **Mohammad Ibrahim and others Vs. State of Bihar (2009(8) SCC 751)**.

16. This Court does not find any substance in the submissions advanced by the applicant. In the facts of present case, it is difficult to examine independently each penal section for which the applicant has been charged as the disputed question of facts required to be tried and tested before the Trial Court. It is settled position of law that when the disputed question of facts are involved, which needs to be adjudicated after the parties adduced evidence, the criminal proceedings ought not to have been quashed by the High Court by taking recourse to Section 482 of the Code of Criminal Procedure, 1973. Thus, the concealment of facts and alleged false disclosure of the address as well as the caste required to be considered by the Trial Court, at the stage of framing the charge whether any other offence is made out or not. It is profitable to refer and rely on the case of **State of A.P. Vs. Golconda Linga Swamy (2004(6) SCC 522)**, wherein the Supreme Court observed and held that when no offence is disclosed, the Court may examine the question of facts. When a

complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

17. In light of the settled legal position and applying to the facts of present case, at this stage, cannot be said that *prima facie* no any offence under the penal law is made out or do not *prima facie* constitute any offence against the accused.

18. It is the second contention that so far as Sections 177 and 181 are concerned, except upon private complaint by the authority concerned, the Court based on the FIR would not have taken cognizance of the offence. This Court finds substance in the submissions. It is settled legal position that the inherent powers should be exercised to quash the proceedings where it appears that there is a legal bar against the institution or continuation of the proceedings (**R.P. Kapoor Vs. State of Punjab, 2004(6) SCC 522**). In the facts of present case, in view of the bar under Section 195(1) of the Code of Criminal Procedure, 1973, the Trial Court could not have taken cognizance of the offence punishable under Sections 177 and 181 of the Indian Penal Code, except on the complaint in writing of the public servant concerned. Thus, so far as the offence under Sections 177 and 181, the prosecution is not sustainable in law and the same deserves to be quashed and accordingly it is quashed with a clarification that the authority may initiate fresh proceedings after following the proper procedure as laid down under Section 195(1) of the Code of Criminal Procedure, 1973.

19. It is the third contention that Section 6(d) of the Disturbed Areas Act has been wrongly involved because on 30.08.2020, when FIR was registered, the amended Section 6(d) was not come into force. The State has fairly conceded these facts. As admittedly, on the date of registration of the FIR, the State Government has not issued the notification the matter was pending at the stage of assent of the Governor. Thus, it is evident that on the date of registration of the offence, the amended Section 6(d) was not come into force and therefore, invocation of Section 6(d) is not sustainable in law and the same deserves to be quashed and accordingly, it is quashed.

20. In the facts of present case, the chargesheet has been filed against the accused. The Apex Court in the judgment reported (**Ishwar Pratapsingh Vs. State of Uttar Pradesh, 2018 (13) SCC 612**), held that there is no prohibition under law for quashing the chargesheet in part.

21. In view of the discussions and reasons made hereinabove, this Court finds that the charges under Sections 177 and 181 of the Indian Penal Code and Section 6(d) of the Gujarat Prohibition of Transfer of Immovable Property and provision of Protection of Tenants from Eviction from the Premises in Disturbed Areas Act, 1991, are quashed. Consequently, chargesheet to that extent is quashed. The FIR in respect of other offences shall be tried by the Trial Court in accordance with law. However, it is open for the accused to raise all the contentions before the Trial Court at the appropriate stage.

22. The observations made hereinabove are tentative *prima facie* in

nature and confined to the adjudication of the present application. The Trial Court shall not get influenced by the said observations during the course of trial.

23. Accordingly, the application is ***allowed in part.***

(ILESH J. VORA,J)

Pallav/Rakesh