

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 22425 of 2022**

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GULABDAS LAXMICHAND KHONA
Versus
STATE OF GUJARAT

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Appearance:

MR GG TRIVEDI(3565) for the Applicant(s) No. 1
MR HEMANT B RAVAL(3491) for the Applicant(s) No. 1
MR NANDISH Y CHUDGAR(2011) for the Respondent(s) No. 2
MS CM SHAH, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 18/01/2024
ORAL ORDER

1. By way of this application, original accused no.7 – Gulabdas Laxmichand Khona, seeks to invoke inherent powers of this Court for quashing of criminal case (ACB Case No.3/2014), pending before the City Sessions Court, Ahmedabad.
2. Brief facts giving rise to file present application are that the accused company – ITA Granite Limited and its Directors availed the financial aid in the form of loan from the Madhavpura Mercantile Cooperative Bank Limited. The loan of Rs.15 lakhs and Rs.30 lakhs were sanctioned and disbursed in the year 1997 – 1998. In the year 2002, the total loan amount was due to the tune of Rs.63,48,702/-. The loan account was earmarked NPA as the company and its Director failed to repay the amount. The Manager of Madhavpura Mercantile Cooperative Bank Limited lodged an FIR against the borrower company and its Directors,

guarantors and the office bearers of the bank for the offence of cheating, criminal breach of trust and forgery. The applicant Gulabchand was arraigned as accused no.7 in the offence in the capacity of guarantor. Pursuant to the said FIR dated 04.08.2005 registered with Ellisbridge Police Station, Ahmedabad, the investigation was undertaken and during the course of investigation, the report was submitted for deletion of Sections 467, 468 and 471 of the Indian Penal Code as the I.O. could not find the evidence of forgery, etc. and the same was accepted by the Court concerned. Accordingly, the chargesheet against the accused came to be filed for the offences punishable under Sections 406, 409, 420 and 120(B) of the Indian Penal Code and Sections 12, 13, 13(1),(C),(D) of the Prevention of Corruption Act, 1988. The case was committed to the Court of sessions and the same has been culminated into Special ACB Case No.3/2014.

3. In the aforesaid facts, by filing the present quashing application, the applicant accused prays that during the proceedings the loan amount has been paid as one time settlement and NOC to this effect issued by the bank vide its certificate dated 11.11.2016. In such circumstances, the role attributed to present applicant herein and considering the loan transaction, the ingredients of the alleged offence qua the applicant are not made out and pendency of the criminal case would nothing, but an amount to abuse of process of the law and Court.
4. This Court has heard learned counsels Mr.H.B. Raval, Mr.Nandish Chudgar and Ms.C.M. Shah, learned APP for

the respondent – State.

5. Mr.H.B. Raval, learned counsel appearing for the applicant, has submitted that the criminal proceedings initiated with a view to recover the loan amount and during the course of proceedings, the principal borrower had paid the entire loan amount as one time settlement scheme and by acknowledging the same, the bank has issued the NOC on 11.11.2016. It is in this context, Mr.Raval has submitted that the applicant was not the beneficiary of the transaction and so far as his role is concerned, he was a guarantor of the borrower and therefore, when there is no allegation of forgery made against the applicant, merely a default on the part of the principal borrower, the applicant guarantor cannot be liable for the alleged offence of cheating and criminal breach of trust and therefore, if the entire chargesheet case papers, accepted as it is, no case is made out against the applicant for the alleged offence and thus, therefore, it is submitted that the pendency of the criminal case is nothing but harassment to the applicant and the same may be quashed and set aside to prevent the abuse of process of the law and Court.
6. Opposing the application, Mr.Nandish Chudgar, learned counsel for the respondent – Madhavpura Bank and learned APP for the respondent – State have jointly contended that the NOC was issued without prejudice to the criminal case and right to pursue the criminal proceedings reserved with the bank. In such circumstances, it is submitted that this is not a fit case to exercise the inherent powers under Section 482 of the

Code of Civil Procedure.

7. Having heard learned counsels for the receptive parties and on perusal of the material placed on record, the issue falls for consideration of this Court whether the case is made out to quash the criminal proceedings by exercising inherent powers under Section 482 of the Code of Civil Procedure.
8. I have carefully perused the allegations made in the FIR as well as chargesheet case papers. The applicant accused is facing the charges for the offence of cheating and criminal breach of trust. Admittedly, the applicant was not direct beneficiary of the loan sanctioned in favour of the accused nos.1 to 3 and the only role attributed is that he was a guarantor and signed the necessary documents. Pursuant to the one time settlement scheme, the entire loan amount has been paid and accordingly, no due certificate having been issued by the bank. In these background facts, this Court is of the considered view that in absence of any allegation of submissions of forged documents, etc. merely a breach of promise, agreement or contract do not *ipso facto* constitute the offence of criminal breach of trust as it is not the case of entrustment of the property and dishonestly converts by the applicant for his own personal gain. So far as offence of cheating is concerned, there is no evidence on record to indicate that at the inception of the loan transaction, there was fraudulent or dishonest intention on the part of the applicant while signing the papers of loan as a guarantor. In this background, it is necessary to refer to and rely the case of Satishchandra

Shah Vs. State of Gujarat (2019(9) SCC 148), wherein in identical matter, the Apex Court has observed that mere inability of the accused to return the loan amount cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction as it is the *mens rea*, which is crux of the matter.

9. In light of the settled position of law and considering the role attributed to the present applicant herein and allegations levelled against him in the chargesheet case papers, this Court is of the considered view that even if all the allegations in the complaint and material in the form of chargesheet are taken on their face value, no such dishonest and/or fraudulent intention could be found on the part of the applicant while acting as a guarantor in the alleged loan transaction. Thus, *prima facie*, it appears that this is a case of breach of contractual obligation and nothing more.
10. In view of the aforesaid, the allegations made in the FIR and chargesheet case papers do not disclose the commission of the offence and make out a case against the applicant accused and in that view of the matter, continuation of the criminal proceedings amounts to an abuse of process of the Court.
11. For the aforementioned reasons and considering the parameters laid down by the Apex Court in the case of State of Haryana Vs. Bhajanlal (1992 Suppl SCC 335), and role attributed to the present applicant herein, the questioned FIR and subsequent proceedings of filing the

chargesheet as well as the proceedings of the criminal case (ACB Case No.3/2014), pending before the City Sessions Court, Ahmedabad are quashed qua present applicant herein.

12. The observations made hereinabove are *prima facie* in nature and confined to the adjudication of the present application. Trial Court shall not get influenced by the said observations during the course of trial.
13. Accordingly, present application is **allowed** in the aforesaid terms.

(ILESH J. VORA,J)

Rakesh