

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 16719 of 2022**

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JAYANTILAL MAGANLAL CHAUHAN

Versus

STATE OF GUJARAT

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Appearance:

MR CHINTAN N DESAI(9940) for the Applicant(s) No. 1

AAKASH D MODI(7449) for the Respondent(s) No. 2

MS CHETNA SHAH, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA**Date : 12/01/2024****ORAL ORDER**

Rule returnable forthwith. Learned APP waives service of rule for the respondent-State.

1. By way of this application under Section 482 of Cr.P.C., the applicant Jayantilal Chauhan-accused no.17 of Criminal Case No.64341 of 2017, has prayed for quashing of the criminal proceedings.

2. Pursuant to the FIR bearing C.R.No.I-347 of 2011, registered with Navrangpura Police Station for the offence punishable under Sections 408, 409, 418, 420, 465, 467, 468, 471, 474, 120B and 114 of the Indian Penal Code, the investigating officer has filed the chargesheet which has been culminated into aforesaid criminal case. In the said criminal proceedings, 31 persons have been arraigned as accused.

3. The applicant namely Jayantilal Chauhan being a Lower Division Clerk of the office of Official Liquidator has been arraigned as accused no.17 in the alleged offence.

4. Brief facts giving rise to file present quashing application are that, the applicant was initially appointed as Lower Division Clerk and was posted at Mumbai on 15.03.2005 and thereafter, he was transferred to Ahmedabad on 31.05.2006. The respondent no.2-Mansukh Devjibhai Parmar who was ex-employee of Calico Printing Ltd., vide its complaint dated 09.12.2011, alleges that, the office bearers of Textile Labour Association in collusion with the employees of the office of Official Liquidator, misappropriated the amount of Rs.1,63,86,800/- payable to workers of closed mill by forging bogus documents. In the FIR, it is alleged that, the Calico Printing Mills Limited was ordered to wound up by the High Court and possession and custody of the mill was taken over by the Official Liquidator in the year of 1998. The Textile Labour Association was working as a supervisory body as it was representative of workers of the closed mill. Pursuant to the rehabilitation scheme introduced by the Central Ministry, the list was prepared by the association so as to extend the financial benefits to the workers. The funds for rehabilitation was deposited. The association sought disbursement of the workmen's claim for 5777 workers. The High Court in a company petition vide its order dated 10.10.2006 directed to pay Rs.50,000/- as ad-hoc compensation to each worker who were in the list of Textile Labour Association and their claim was audited and certified by M/s. Amaldutt and Associates who

had verified and investigated the claim papers submitted by the Association. The payment as directed by the High Court was made by the Office of Official Liquidator by issuing account payee cheques.

In the aforesaid facts, the complainant being a member of the association, alleged in the FIR that, the payment made to 284 workers are bogus and the amount whatever deposited in the bank account of workers having been withdrawn by the members of the association and others by submitting fabricated and forged documents for their financial benefits whereby the employees of the Office of Official Liquidator and the members of the association have committed an offence of forgery, forgery for the purpose of cheating and fraudulently and dishonestly used such documents as genuine so as to gain financial benefit.

5. Pursuant to the aforesaid FIR lodged with Navrangpura Police Station, Ahmedabad, the chargesheet came to be filed for the aforesaid offences by the Economic Cell, CID Crime and same has been culminated into criminal case which is pending before the Additional Chief Metropolitan Magistrate Court at Ahmedabad.

6. This Court has heard learned counsel Mr. Chintan N. Desai for the applicant and Ms. Chetna Shah, learned Additional Public Prosecutor for respondent-State.

7. Mr. Chintan Desai, learned counsel appearing for the applicant has submitted that, the applicant being an employee of the Office of Official Liquidator, has been falsely involved in

this offence. That, he was not named in the FIR. That, he was simply a Lower Division Clerk in the office and in discharge of his official duty, he has prepared a cheque as directed by the Higher Authority and same was not signed by him, nor, in any manner was involved in preparing the list of the workers. That, the workers through their Association, submitted their claims either individually or consolidated and the same was verified by the Chartered Accountant. That, at the time of submitting the claim, the association of workers submitted the claim along with the necessary proof of identification and other supporting documents and same were examined and investigated by the Chartered Accountant and after finalizing the list, the process for payment was undertaken by the Office of Official Liquidator.

8. In view of aforesaid facts, Mr. Desai, learned counsel has submitted that the applicant, being a Clerk of the Office of Official Liquidator, has been falsely implicated in the alleged offence and during the course of investigation, nothing incriminating material found against the applicant to establish that he was involved in making the forged record of the workers for financial gain and therefore, the ingredients of alleged offence are not attracted so far role attributed to the present applicant is concerned and therefore, the continuation of criminal proceedings would nothing but a sheer abuse of process of law and Court and it has caused harassment to the applicant as after his retirement, due to pendency of the proceedings, the department has withheld the retiral benefits.

9. On the other hand, the private respondent who has

lodged the FIR, has not opposed the petition.

10. Ms. C.M. Shah, learned Additional Public Prosecutor appearing for the respondent-State raised the contention that the application itself is not maintainable as this is a successive quashing petition filed without any change in the circumstances. She would urge that, in the first round, the quashing petition came to be dismissed on merits and therefore, this application may not be entertained. The second contention raised is that, the applicant is facing the charges of criminal conspiracy and at relevant time, the applicant was a public servant and had prepared cheques to be deposited in the bank accounts of the workers and therefore, it is not necessary that, all the conspirators should participate actively and therefore, the contention whatever raised cannot be examined at this stage, Court should not embark upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR. In such circumstances, Ms. Shah, would contend that, no any extraordinary circumstances exist to exercise the extraordinary power of this Court and thus, the application may be dismissed with cost.

11. Having heard the learned counsel for the respective parties and on perusal of the allegations made in the FIR as well as chargesheet, the issue falls for my consideration is whether this successive quashing petition in the facts and circumstances of the present case is maintainable? If the answer is in affirmative, then, the second issue is whether case is made out to invoke extraordinary jurisdiction of this Court for quashing the criminal proceedings?

12. The State has raised the issue that, earlier quashing petition filed by the applicant and others was rejected by this Court and now, by this petition, the same issue cannot be raised. On this contention, Mr. Desai, learned counsel, relying upon the judgment of *Bhishmalal Verma vs. State of U.P.* 2023 *AIJEL-SC 72713*, to contend that, the successive petition would be maintainable if there is a change in the fact situation and the principle of resjudicata would not be applicable. Mr. Desai, on factual aspects has submitted that, the first quashing petition was rejected by this Court mainly on the ground that the investigation was at crucial stage and the chargesheet yet to be filed. He would further submits that, the chargesheet in the case was filed on 05.10.2017 and thereafter, this petition is filed on 06.09.2022. Thus, therefore, it is submitted that, filing of the chargesheet would be a change circumstances so as to avail appropriate remedy. He also drew the attention of this Court towards the order dated 29.10.2021 passed in the matter of co-accused namely Maheshbhai Premchandbhai Shah to contend that, the co-accused who had signed the cheque was considered by this Court and criminal proceedings qua him has been terminated. In such circumstances, he would submits that, in the aforesaid change circumstances, the present quashing petition is maintainable and dismissal of earlier quashing petition is no bar to file fresh petition.

13. On the issue of maintainability of successive quashing petition, the Apex Court in its recent decision (*Bhishmalal Sharma*), after referring the earlier decisions, held that, a subsequent application under 482 would be maintainable in

change circumstances, if it is not a repeat application squarely on the same facts and circumstances.

14. In light of the law laid down by the Apex Court and considering the peculiar facts and circumstances of the present case, more particularly the entire facts of earlier application having been disclosed in the application by the applicant and in the earlier application, the main contention was raised that the applicant had acted in a good faith while discharging his official duties and therefore, claiming immunity, the quashing was sought. The present subsequent application, after filing of the chargesheet as well as order passed in the matter of co-accused. In such circumstances, this Court is of considered view that, the subsequent application cannot be said to be on same ground and on the same facts and thus, considering the change circumstances, as discussed above, this Court is of opinion that the present subsequent petition is maintainable.

15. It is not in dispute that from 2006 to the date of filing of the chargesheet, the applicant was permanent employee of Office of Official Liquidator. Pursuant to the Central Government Scheme, the ad-hoc amount of compensation of Rs.50,000/- to each worker of the closed mill were disbursed by the Office of Official Liquidator. The Textile Labour Association who is representative of the workers had submitted the claim before the Office along with the list of qualified workers and same was examined and investigated by the independent auditor who by profession is qualified Chartered Accountant. In the FIR as well as chargesheet case

papers, except name of the applicant, nothing brought on record against the applicant that he was part of the alleged criminal conspiracy hatched by the co-accused or in any manner he was knowing the design conspired by the co-accused. It is not the case of prosecution that, the applicant is the maker of the forged documents which were submitted before the bank for withdrawal purpose. There is no allegation that the applicant was beneficiary of the alleged withdrawal of the amount. The applicant being a Lower Division Clerk, at the instance of higher authority, prepared a cheque in the name of workers. The list of the workers was verified and examined by the association as well as the auditor. The applicant was not the signatory authority of the cheques.

16. In view of the aforesaid admitted facts, this Court is of considered view that, when the applicant-accused is not found to be makers of forged documents, the essential ingredients of forgery, making a false document, forgery of valuable security are not attracted so far role attributed to the present applicant is concerned. The Apex Court in case of ***Mohd. Ibrahim vs. State of Bihar AIR 2009 8 SCC 791***, while dealing with the identical issue of making a false document, has laid down that, a person is said to have made a false document if he made or execute a document claiming to be someone else; or he altered or tempered a document or he obtained a document by practicing deception or from a person not in control of his senses. In the facts of present case, the list of the workers along with the documents were prepared and submitted by the association of workers and same was investigated by the

auditor and therefore, this Court is of view that, *prima-facie*, it cannot be said that the applicant was part in making the bogus list or had prepared a false document as defined under Section-464 of the Indian Penal Code and therefore, when the forgery is not established, then neither Section 467 or Section 471 of the Code are attracted.

17. So far conspiracy as alleged against the applicant is concerned, in the entire chargesheet case papers, no any witnesses have stated that, from the very inception of making the list of workers and till disbursement of the amount to them, the applicant had knowingly, in order to execute the said conspiracy had prepared the cheques. Therefore, *prima-facie*, the ingredients of Section 120B are not attracted. Even, from the chain of aforesaid circumstances do not establish the fact that the applicant was member of alleged conspiracy.

18. In view of the aforementioned reasons and considering the role attributed to the present applicant herein, this Court is convinced that, allowing the proceedings to continue would be an abuse of process of Court. In the case of *State of Karnataka vs. L. Muniswamy AIR 77 SC 1489*, the Apex Court observed that, the wholesome power under Section 482 Cr.P.C. entitles the High Court to quash a proceeding when it comes to conclusion that allowing the proceeding to continue would be an abuse of process of Court. The Apex Court in the said judgment also observed that, a Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution and ends of justice are higher than the ends of mere law though justice must be administered according to

law made by the legislature.

19. In light of the above settled principles of law and considering the parameters for quashing pointed out in the case of State of Haryana and others (1992 Criminal Journal 527) this Court is of *prima-facie* considered view that, the uncontroverted allegations made in the FIR and evidence collected during the course of investigation do not disclose the commission of any offence or make out a case against the applicant-accused.

20. Resultantly, the application succeeds. The impugned **FIR being C.R.No.I-347 of 2011 registered with Navrangpura Police Station, Ahmedabad City** as well as other consequential proceedings are hereby quashed and set aside qua the applicant herein. Accordingly, Rule is made absolute. Direct service is permitted.

21. The observations made hereinabove are tentative in nature and confined to decide the contentions raised herein.

(ILESH J. VORA,J)

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