

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 20626 of 2013

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

Sd/-

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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 India or any order made thereunder ?	No

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HARUNBHAI FAKIRMAHMAD RATHOD & ORS.
Versus
STATE OF GUJARAT & ANR.

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Appearance:

MR APURVA R KAPADIA(5012) for the Applicant(s) No. 1,2,3

MR CHIRAG B PATEL(3679) for the Respondent(s) No. 2

MR. SOHAM JOSHI, LD. ADDL. PUBLIC PROSECUTOR for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

Date : 09/07/2024

CAV JUDGMENT

1. By this application under section 482 of the Code of Criminal Procedure,1973, the applicants seek to invoke the

inherent powers of this Court praying for quashing of the first information report being C.R. No.I-46 of 2013 registered before the Tilakwada Police Station at Narmada for the offence punishable under sections 406, 420 and 114 of the Indian Penal Code.

2. Briefly stated the facts of the present case are that the complainant and his brother purchased some parcels of land from the applicants herein somewhere in the year 2011, for which, an agreement to sell also came to be executed by the applicants in favour of the complainant and his brother in respect of their respective lands. It is alleged in the complaint that at the time of execution of the sale deed, 30% of the total sale consideration was paid by the complainant as well as his brother to the applicants for the respective lands purchased by them. It is also alleged in the complaint that at the relevant point of time, the price of the lands in question was fixed at Rs.2,25,551/- per Acre and it is clearly mentioned in the agreement to sell that the said agreement to sell would remain in operation unless and until the applicants get their lands title cleared. It is alleged that, however, as and when the complainant asked about the title clearance of the land and to execute the sale deed in his favour, under one pretext or the other, the applicants made excuses and denied to execute the sale deed by asking the complainant to pay the prevailing price of Rs.5,00,000/- per Acre if he wants to get executed the sale deed and thereby all the applicants have committed an offence of criminal breach of trust and cheating with the complainant. Hence, the impugned FIR.

3. Learned advocate Mr. Apurva Kapadia appearing for the applicants submits that as per the case of the prosecution the alleged incident took place on 09.12.2011, for which, a complaint came to be lodged on 17.07.2013 and, therefore, there is a gross delay of one and a half year in registering the complaint. Learned advocate Mr. Kapadia further submits that it is apparent on the face of the record that instead of preferring a suit for specific performance of contract, the complainant has straightway filed the impugned FIR against the applicants, which is nothing but a sheer abuse of process of law and an arm twisting tactic to pressurize the applicants. It is clear from the record the entire dispute is purely civil in nature and an attempt is made to give a cloak of criminal offence to a civil dispute. He also submits that the validity of the agreement to sell was of six months from the date of its execution within which period, the complainant had to pay the remaining amount 70% of the amount. However, the complainant failed to pay the remaining 70% amount despite several reminders at the end of the applicants. Learned advocate Mr. Kapadia submits that even if the allegations levelled in the first information report are believed to be true that the right of the complainant is being breached by the applicants, then also there is a remedy available with the complainant to file a civil suit before the competent court instead of straightway registering a criminal complaint. Learned advocate Mr. Kapadia further submits that immediately after the registration of the impugned FIR, the applicants moved an application for anticipatory bail which

came to be allowed by the learned Sessions Judge at Narmada and the applicants were released on anticipatory bail. Thereafter, the applicants approached this Court by way of filing the present application and obtained an order of stay. He also submits that to constitute the offence under Sections 406 and 420 are concerned, there has to be a dishonest intention on the part of the accused right from the inception, and if the Hon'ble Court would go through the contents of the complaint, it is found out that there was an agreement to sell executed between the parties and as per the said agreement to sell, the complainant had to pay the remaining amount of the sale consideration within a period of six months to get the sale deed executed, however, the complainant failed to pay the said amount within the prescribed time limit and, therefore, it can be said that there was no fault or dishonest intention in any manner on the part of the applicants in not executing the sale deed, and as such, the ingredients of Sections 406 and 420 of the IPC are not attracted in the present case. To buttress his submissions, learned advocate Mr. Kapadia has relied upon the following decisions;

i) The decision of the Hon'ble Supreme Court in the case of Naresh Kumar & Anr. vs. State of Karnataka & Anr., reported in 2024 (3) SCR 740;

ii) Another decision of the Hon'ble Supreme Court in the case of Kunti vs. State of Uttar Pradesh, reported in 2023 (6) SCC 109;

4. In such circumstances, referred to above, learned

advocate Mr. Kapadia prays that there being merit in his application, the same be allowed and the impugned FIR be quashed and set aside.

5. On the other hand, this application has been vehemently opposed by learned advocate Mr. Chirag Patel appearing for the respondent No.2- original complainant and submits that it is an admitted position of fact that at the time of execution of the agreement to sell, the amount of consideration was paid by the complainant and the complainant has strictly adhered with the terms and conditions as mentioned in the agreement to sell. Time and again, the complainant has requested the applicants to get the sale deed executed upon payment of remaining amount of the sale consideration, however, for one reason or the other, they were evading to execute the sale deed in favour of the complainant. He also submits that as per the agreement to sell, the remaining amount had to be paid after the lands get title cleared by the applicants, however, the applicants did not clear the title of the lands as per the agreement, and with the passage of time, seeing the hike in the price of the lands, they changed their mind and started asking the complainant to pay the higher price of the lands than what was agreed between them at the time of execution of the agreement to sell, which clearly shows that there was a mala fide intention on the part of the applicants since inception and, therefore, at this stage, the First Information Report should not be quashed and the trial should be permitted to proceed further. Hence, the present application deserved to be rejected.

6. Learned APP Mr. Soham Joshi appearing for the respondent-State has adopted the arguments canvassed by the learned advocate appearing for the applicants and prays for dismissal of the present application.

7. Having heard the learned counsel appearing for the parties and having considered the materials on record, the only question that falls for my consideration is, whether the proceedings should be quashed.

8. It is now well settled that the power under Section 482 of the Code has to be exercised sparingly, carefully and with caution, only where such exercise is justified by the tests laid down in the Section itself. It is also well settled that Section 482 of the Code does not confer any new power on the High Court but only saves the inherent power, which the Court possessed before the enactment of the Criminal Procedure Code. There are three circumstances under which the inherent jurisdiction may be exercised, namely (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of Court, and (iii) to otherwise secure the ends of justice.

9. In *Paramjeet Batra v. State of Uttarakhand & Ors.*, reported in (2013) 11 SCC 673, the Hon'ble Apex Court held:-

"12. While exercising its jurisdiction under Section 482 of the Code of 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 the

*facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. **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.***

10. In Vesa Holdings Private Limited and Anr. v. State of Kerala and Ors., reported in (2015) 8 SCC 293, it was held that: -

*“13. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. **In the present case there is nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC. In our view the complaint does not disclose any criminal offence at all. The criminal proceedings should not be encouraged when it is found to be mala fide or otherwise an abuse of the process of the court. The superior courts while exercising this power should also strive to serve the ends of justice. In our opinion in view of these facts allowing the police investigation to continue would amount to an abuse of the process of the court and the High Court committed an error in refusing to exercise the power under Section 482 of the Criminal Procedure Code to quash the proceedings.**”*

11. In Kapil Aggarwal and Ors. v. Sanjay Sharma and Ors.

Reported in (2021) 5 SCC 524, the Supreme Court held that Section 482 is designed to achieve the purpose of ensuring that criminal proceedings are not permitted to generate into weapons of harassment.

12. In the decision in State of Haryana v. Bhajan Lal, reported in AIR 1992 SC 604, a two Judge Bench of the Supreme Court considered the statutory provisions as also the earlier decisions and held as under: -

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

13. I am in full agreement with the decision relied upon by the learned advocate for the applicant in the case of Naresh Kumar (supra), wherein the Hon’ble Supreme Court has also relied upon the decision of the Param Jeet Batra (supra) as also has made a reference to other decisions wherein also the decision of the Param Jeet Batra (supra) has been relied upon and held that the dispute involved therein was relating to a breach of contract and a mere breach of contract, by one of the parties, would not attract prosecution for criminal offence in every case. Thus, in my view, the said ratio is squarely applicable to the case on hand.

14. Similarly, another decision upon which reliance is being placed by the learned advocate for the applicant in the case of Kunti (supra) is also squarely applicable to the present case as in the said decision, after referring to its own decision in the case of Sarabjit Kaur vs. State of Punjab & Anr., reported in 2023 SCC Online 210, the Hon’ble Supreme Court has observed that the dispute therein was entirely with respect to property and more particularly buying and selling thereof and,

therefore, it cannot be doubted that a criminal hue has been unjustifiably lent to a civil natured issue.

15. A plain reading of the FIR reveals that the allegations levelled by the respondent No.2 are quite vague, general and sweeping, specifying no instances of criminal conduct. It is worthwhile to take note of the fact that the respondent herein has alleged commission of offences under Sections 406, 420 and 114 of IPC against the applicants. In this regard, let me refer to the ingredients to constitute such offences.

Offence of criminal breach of trust punishable under Section 406, IPC.

(i) Entrustment of the property or any dominion over property with accusation; (ii) The person entrusted dishonestly misappropriating or converting to his own use that property; or dishonestly using or disposing that property in violation of any direction of law prescribing the mode in which such trust is to be discharged or of any legal contract, express or implied, which he has made touching the discharge of such trust or willfully causing sufferance to any other person so to do.

Offence punishable under Section 420, IPC.

To constitute the said offence there must be deception i.e., the accused must have deceived someone; that by such deception the accused must induce a person (i) to deliver any property; or (ii) to make, alter, destroy a whole or part of the valuable

security or anything which is signed or sealed and which is capable of being converted into a valuable property; or (iii) that the accused must have done so dishonestly.

16. Now, the question is whether the allegations made in the FIR are sufficient to constitute the alleged offences. The materials available on record pertaining to the present case insinuates that there was an agreement to sell between the applicants and the complainant for respective parcels of lands. It is not in dispute that the complainant has already paid the 30% of the total sale consideration at the time of execution of the agreement to sell. It also appears that the agreement to sell came to be executed in the year 2011 and the impugned FIR came to be filed in the year 2013, i.e., after lapse of almost one and a half year. Now the question is what the complainant was doing during the interregnum period. Why he kept mum and not instituted any legal proceedings during that period. He had a remedy available with him by filing a civil suit in the competent civil court for specific performance of contract, if there was any breach of condition of the agreement at the end of the applicants. Moreover, as per the ratio laid down by the Hon'ble Apex Court in the decisions referred to above, mere breach of contract, by one of the parties, would not attract prosecution for criminal offence in every case. The aforesaid factual position thus would reveal that the genesis as also the purpose of instituting the criminal proceedings are nothing but a sheer abuse of process of law to put the applicants herein under fear and further that the dispute involved is essentially of civil nature. A criminal texture is being given to purely a civil

dispute.

17. In the aforesaid circumstances, coupled with the fact that in respect of the issue involved, which seems to be of a civil nature, the respondent No.2-original complainant instead of resorting to the civil remedy available and provided in law, has straightway filed the criminal complaint against the applicants, which can undoubtedly be called as an attempt on the part of the second respondent to use the criminal proceedings as weapon of harassment against the appellants.

18. For the foregoing reasons, I hold that if the criminal proceedings are allowed to continue, then it will be nothing short of abuse of process of law and travesty of justice. This is a fit case wherein the inherent powers under Section 482 of the Code should be exercised for the purpose of quashing the FIR..

19. In the result, this application succeeds and is allowed. The first information report being C.R. No.1-46 of 2013 lodged before the Tilakwada Police Station, Narmada is hereby ordered to be quashed. All consequential proceedings arising from the same also stands terminated. Rule is made absolute to the aforesaid extent.

Direct service is permitted.

VAHID

(DIVYESH A. JOSHI,J)