

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3954 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 - No

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JAYSHANKAR ALIAS BATUKBHAI      MANEKLAL OZA

Versus

AMRATLAL HEMCHAND MEHTA

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Appearance:

MR YS MANKAD for Petitioners  
MR CL SONI for Respondent No. 1  
MR SURESH C SHAH for Respondent No. 2  
MR SA PANDYA, APP for Respondent No. 3

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CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 31/03/99

C.A.V. JUDGEMENT

Present petitioners and respondent No.2 are the accused in Criminal Case No.87 of 1998 wherein learned Judicial Magistrate First Class, Anjar had issued process against the present petitioners and respondent No.2 under secs.405, 420 and 120(b) of IPC. Against that order and complaint, present petitioners have filed the present Cri. Misc. Application under sec.482 of Cr.P.C. and prayed for quashing and setting aside the Criminal case No.87 of 1998.

2. I have heard Mr.Y.S.Mankad, learned counsel for the petitioners, Mr.C.L.Soni, learned counsel for the respondent No.1, Mr.Suresh C. Shah, learned counsel for the respondent No.2 and Mr.S.A.Pandya, learned APP for respondent No.3-State.

3. In brief, the allegations made against the present petitioners and respondent No.2 in the complaint are that they are the real brothers and sister respectively. They inherited the property in question for which accused Nos.1 and 2 have misrepresented before the complainant and as a result of that, complainant and others agreed to purchase the property in question and in turn, complainant and others entered into an agreement with the accused No.1 for the sale of property which has been signed by accused No.1 and he has received the earnest money. At that time, accused No.1 has represented before the complainant and others that accused Nos.1 and 2 are the sole owners of the property in question and the title of the said property is free from all encumbrances and it is marketable. Thereafter, two more Agreements to Sale have been executed between the parties. But the accused have not executed the Sale Deed in favour of the complainant and others though they have received sizeable amount by way of sale consideration. After receiving the above amount by way of sale consideration and though the promises were given to execute the Sale Deed as agreed upon in the Agreements to Sale, the respondent No.2, for the purpose of misappropriating the sale consideration, has filed one civil suit being Special Civil Suit No.188 of 1998 and obtained ex-parte injunction wherein present accused were made as party defendants and even the complainant was made as defendant No.1. Thereafter also, present petitioners-original accused have given false promise and assurance with ulterior motive to the complainant that he should not appear in the above Special Civil Suit and it will be settled and, thereafter, they will execute the registered Sale Deed in their favour. But ultimately, the above interim injunction has been confirmed by the Court. Against that, present complainant has filed Civil Revision Application in this Court. Because of that, the respondent No.1-original complainant had filed the criminal complaint directly in the Court of Judicial Magistrate First Class, Anjar on 1-1-1995 which was registered as Inquiry Case No.1 of 1995. After recording the detailed verification of the complainant by the Court, Court has passed a reasoning order on the complaint on the same day and above Inquiry case has been disposed of. Against that, present respondent No.1-original complainant had filed Criminal Revision Application No.49 of 1995 in the District and Sessions

Court, Kutch at Bhuj. After hearing the learned counsel for the respective parties, the above Criminal Revision Application was allowed by the learned Sessions Judge by setting aside the order passed by the Court below in Inquiry Case No.1 of 1995 on 1-5-1995 and directed the learned J.M.F.C. to enquire into the above Inquiry Case No.1 of 1995 under sec.202 of Cr.P.C. by remanding back the matter to Court below. After receiving the same, learned J.M.F.C. has passed the order on 18-2-1998 and issued process against the present petitioners and respondent No.2 under secs.405, 420, 114 and 120(b) of Indian Penal Code. It is against the said order the present petitioners and respondent No.2 have preferred the present Misc. Cri. Application for quashing the complaint and the process issued by the Court on 18-2-1998.

4. Learned counsel for the petitioners-original accused has mainly argued that there are various civil proceedings lying in the Courts including the suit for specific performance of the contract for the property in question and there are civil disputes regarding the Agreements to Sale pending in the Courts. It is further argued by him that the respondent No.2-original complainant has tried to convert the civil dispute into criminal one with ulterior motive and with mala fide intention. Therefore, the present process is required to be quashed and set aside. It is further argued that complaint does not disclose any ingredients of offence and it is frivolous and vexatious.

5. Learned counsel for the respondent No.2 has accepted the argument advanced by the learned counsel for the petitioners. Whereas the learned counsel for respondent No.1-original complainant has objected the same on the ground that because civil proceedings are filed and pending in the civil Courts, there is no bar in filing a criminal complaint if the offence is of criminal nature. He has also argued that the District and Sessions Judge, Kutch at Bhuj has also directed learned J.M.F.C. to enquire into the complaint under sec.202 of Cr.P.C. and after enquiring the same, he has issued the process and, therefore, at this stage, the Court should not interfere under sec.482 of Cr.P.C.

6. It is not in dispute that the present petitioners and respondent No.2 are real brothers and sister. It is prima-facie established that there are three agreements to sale on record for the property in question for which, the present criminal complaint is filed by the complainant. The petitioner No.2 is permanently staying

at Calcutta and respondent No.2 at Bombay. it is also established from the record and proceedings that the respondent No.2 is the sister of the present petitioners and she has filed one Special Civil Suit No.188 of 1992 on 25-9-1992 in the Court of learned Civil Judge (Sr.Divn.) at Bhuj against the present petitioners and the complainant declaring that she has got a right in the property in question as it is an ancestral property. Now it has been transferred to Anjar and numbered as Special Civil Suit No.65 of 1995. She has also filed an application exh.5 for interim relief and ex-parte interim injunction was granted by the Court for maintaining the status-quo in respect of the property in question. Ultimately it has been made absolute till the final disposal of the suit. Against that order, the complainant had filed Appeal From Order bearing No.136 of 1996 in the High Court of Gujarat and same was disposed of by the Court on 11-3-1996 directing to expedite the suit with a liberty to the appellant-original complainant to file an application for modification of the order passed by the Court below on exh.5 application. At present, the above suit is pending in the Court below. According to the petitioners, because of the above order passed by the learned Civil Judge (Sr.Divn.), Bhuj, they were not in a position to execute the Sale Deed in favour of the complainant. Though the complainant was the party in this suit, he has chosen not to appear and object the same. Instead of doing so, he has filed the complaint in question. Even the respondent No.1-original complainant has filed the civil Suit No.189 of 1994 before the Civil Judge (Sr.Divn.) at Bhuj against the petitioners Nos.1 and 2 for specific performance of the agreement and for injunction and also taken out exh.5 application and prayed and obtained ad-interim injunction order restraining the petitioners from transferring or alienating the suit property and thereafter it was transferred to the Court of Civil Judge, Anjar renumbering as Special Civil Suit No.106 of 1995. Thereafter, even the present petitioners have filed undertaking to that effect and in view of the above undertaking, the Court has confirmed the interim injunction till the final disposal of the suit. Above suit has been filed by the present complainant-respondent No.1 in the year 1994, admittedly prior to filing of the complaint in question. After knowing fully well that the respondent No.2 had filed civil suit against the present petitioners and complainant and obtained interim injunction against them for not executing the Sale Deed in favour of complainant and others and knowing fully well that he has also filed the suit for specific performance prior to the filing of the complaint in

question and obtained interim injunction in his favour. But he has suppressed the said fact regarding the filing of the suit for specific performance of the property in question while filing the complaint in question on 1-5-1995. In short, he has not disclosed the above fact in the complaint. So, it can be said that he has filed the complaint after suppressing the material fact. So he has filed the complaint with ulterior motive and tried to convert the civil suit which are already pending in the Court into criminal one just for the purpose of pressurising the petitioners accused knowing fully well that the respondent No.2 is an old woman permanently residing at Bombay. According to her, she was not present at the time of executing the alleged Agreement to Sale. Same way, though the petitioner No.2 has executed the Power of Attorney in favour of the petitioner No.1, he was never present while executing the agreement to sale in question and, therefore, according to him, there was no question of giving the false promise to the complainant by him in presence of witnesses at the relevant time and thereafter. According to the above two accused, they have been falsely implicated and just to pressurise them knowing fully well that one is permanently staying at Calcutta and another at Bombay and if criminal complaint will be filed against them and process will be issued, then definitely the motive of the complaint will be fulfilled only on that count. In short, the dispute between the parties are of civil nature.

7. I entirely agree with the arguments advanced by the learned counsel for the respondent No.1 that there cannot be any bar in filing the criminal proceedings wherein civil disputes are pending. But it should be independent one and it should not be filed with ulterior motive or for the purpose of pressurising or getting the result in their favour as per their wishes using the criminal proceeding as a weapon. Hence, though the Court below has taken the cognizance and issued the process, the facts remain that above process has been issued in the dispute of civil nature and more particularly it is a result of suppression of the material fact before the Court below and it is filed for the purpose of harassing the petitioners-accused with ulterior motives. Therefore, it is a fit case wherein this Court should exercise the power under sec.482 of Cr.P.C. It was held in 1993(1) G.L.H. UJ 21 decided by this Court (Coram: M.S.Parikh, J.) that "complaint-the disclosing the dispute of civil nature-civil suit already filed-process could not be issued". In view of the above judgment, no support of any other judgments is required.

8. In the result, I quash and set aside the Criminal Case No.87 of 1998 and the process issued against the petitioners and respondent No.2 by order dated 18-2-1998 by learned Judicial Magistrate First Class, Ajnar. Rule is made absolute.

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