

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2459 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 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? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

DINESHBHAI MAFATLAL PATEL

Versus

HASMUKHBHAI MARGABHAI PATE & OTHERS

Appearance:

MR RAJESH K DESAI for Petitioner
Though RULE SERVED, Respondent No. 1 absent.
MR HL JANI APP for Respondent No. 2- State.

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 29/09/2000

ORAL JUDGEMENT

The original accused of Court Inquiry Case No. 30 of 1994 which is still pending on the file of the learned Metropolitan Magistrate, Court No.9, Ahmedabad

(who will be referred to as the learned Magistrate of the trial Court for the sake of brevity), has, by filing this application under Sec. 482 of the Criminal Procedure Code, 1973 (for short Cr.P.C.), requested this Court to quash the proceeding initiated against him on the basis of a Private Complaint lodged by present respondent no.1 on 7th February, 1994.

2. Here in this case, petitioner is the accused, whereas respondent no.1 is the complainant in aforesaid Court Inquiry Case No.30 of 1994. Respondent no.2 is the State of Gujarat i.e. Prosecution. The parties will be hereinafter referred to as the complainant and accused respectively at appropriate places.

3. The facts leading to this present Criminal Misc. Application, in a nutshell, are as follows :-

The complainant lodged one Private Complaint on 7th February, 1994 in the Court of the learned Magistrate against the accused for offences punishable under Secs. 406-430-467-468 of I.P.C. On 7/2/1994, below that complaint, the learned Magistrate passed an order directing his office to send the said complaint of complainant to Police Inspector of State Crime Branch, under Sec.156(3) of the Cr.P.Code. Being aggrieved against and dissatisfied with the said order dt. 7th February, 1994, below complainant of complainant, the original accused has preferred this present application under Sec. 482 Cr.P.C. requesting this Court to quash the proceedings initiated against him.

4. I had heard Shri Rajesh K.Desai, learned advocate for the applicant and learned APP for the respondent no.2 -State, on 8th September, 2000. Shri R.K.Desai had, by reading the complaint in between the lines, argued that facts did not disclose commission of any offence, and therefore, complaint should be quashed by this Court. Today when this matter was taken up for further hearing of the arguments, Shri R.K.Desai has drawn an attention of this Court that this very present complainant had lodged one Private Complaint in the Court of the learned Metropolitan Magistrate, Court No.5, Ahmedabad against the present petitioner and one another accused Amiben. That complaint was lodged for the only offences under Secs. 406-420-114 of the I.P.Code. Copy of that complaint is at Pages from Page 21 to 25. The learned Metropolitan Magistrate of Court No.5, Ahmedabad passed an order dt. 7/9/1993 to hold inquiry under Sec.202 of the Cr.P.Code by that Court itself. Shri R.K.Desai, learned advocate for the petitioner has further argued

that on the next day i.e. on 8th September, 1993, the complainant filed one application in the case of Inquiry No.99 of 1993 and by submitting that application, he requested that Court of learned Magistrate that his complaint be filed as he did not want to proceed further in the matter. The learned Magistrate passed only order " Granted ". Certified copy of that application is produced at Page 26. If we read that copy of application, we find that person who signed in name of complainant was not identified by any advocate. It is possible that some one might have submitted that application as if it is signed by complainant. Hence that applicatio is very much doubtful.

5. Shri R.K.Desai has argued that though an earlier complaint was withdrawn by the complainant, he filed the present complaint which has been registered as Court Inquiry Case No.30/94, and therefore, this fact itself shows that this complaint is false one and the learned Magistrate ought not to have passed an order for investigation under Sec. 156(3) of the Cr.P.Code. He has further argued that had the complainant mentioned in his present complaint which he filed on 7th February, 1994 about earlier complaint which he had lodged in the Court of the learned Magistrate, Court No.5, Ahmedabad on 7th September, 1993, perhaps the learned Magistrate would not have ordered to investigate the case under Sec. 156(3) of the Cr.P.Code. He has further argued that offence was of the year 1991 and complaint has been lodged on 7th February, 1994 and on the ground of delay also, that complaint requires to be quashed and set aside.

6. It may be noted that the learned Magistrate has not taken any cognizance on the complaint lodged on 7th February, 1994. He merely transmitted that complaint to Police Inspector, State Crime Branch for investigation under Sec.156(3) of the Cr.P.Code. In view of legal position settled in case of DEVARAPALLI LAKSHMINARAYANA REDDY AND OTHERS vs. V. NARAYANA REDDY AND OTHERS, reported in AIR 1976 SC 1672, a simple order of directing investigation under Sec.156(3) of the Cr.P.Code cannot be said to be an order of taking cognizance of the offence, Therefore, the learned Magistrate has not taken any cognizance against the accused. Matter is at the stage of investigation. Had this Court not granted a stay for investigation, possibly the Investigating Officer might have filed a final report for "B" or "C" Summary. Thus the subject matter of the complaint is required to be investigated on the point as to whether the allegations are in fact true, correct and genuine or not.

7. The complainant had lodged his previous complaint against two accused including the present petitioner and that complaint was only for offences punishable under Secs. 406-420-114 of the I.P.Code, whereas the present complaint is against only the petitioner and in the present complaint, Amiben is not shown as one of the two accused persons. The present complaint is lodged for some more offences like offences punishable under Secs. 467 and 468 of Indian Penal Code.

8. I have gone through this complaint. The allegations are there to attract offences punishable under Secs. 467 and 468 of the Indian Penal Code, and therefore, on reading that complaint, it cannot be said that earlier complaint was exactly similar to that of the present complaint. Shri R.K.Desai has cited an authority of G. SAGAR SURI & ANR. VS. STATE OF U.P. & Ors., reported in Judgment Today 2000(1) SC P. 366, wherein it has been held that

" Jurisdiction under Section 482 of the Code has to be exercised with a great care. In exercise of its jurisdiction, High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal Proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. xxx xxx xxxxx xx xxx xxxxx Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

9. Keeping in mind, the powers of this Court to be exercised under Sec.482 of Criminal Procedure Code, 1973, this Court has found that the learned Magistrate has not yet issued any process by "taking cognizance of the offences". The learned Magistrate has simply sent the complaint for mere investigation. The question of "taking cognizance" would arise only after final report is submitted by the Investigating Officer, and therefore, when the learned Magistrate has not taken any cognizance, question does not arise for exercising jurisdiction to set aside that complaint.

10. In above view of what is stated hereinabove, this Court is of the view that the subject matter does not warrant that complaint should be quashed at this stage, and therefore, this Criminal Misc. Application deserves

to be dismissed. Accordingly it is dismissed. Rule is discharged. Interim relief granted on 20th October, 1994 stands vacated forth with. The learned Magistrate of the trial Court is directed to proceed further in the case of Court Inquiry Case No.30 of 1994, by ordering/directing the Police Inspector, State Crime Branch, Ahmedabad to proceed further in view of order dt. 7th February, 1994 passed below that complaint by the then learned Magistrate.

Date: 29/9/2000. (H.H.MEHTA,J.)

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