

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**CRIMINAL MISC.APPLICATION No. 10030 of 2006**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE M.R. SHAH**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the Civil Judge?

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**GULABBHAI DAMODARBHAI THAKKAR - Applicant(s)**

**Versus**

**STATE OF GUJARAT & 1 - Respondent(s)**

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**Appearance :**

MS AVANI S MEHTA for Applicant(s) : 1,  
PUBLIC PROSECUTOR for Respondent(s) : 1,  
MR NS DESAI for Respondent(s) : 2,

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**CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**

**Date : 31/07/2007**

**ORAL JUDGMENT**

1. Present application has been filed under Section 482 of the Criminal Procedure Code (for short "the Cr.P.C.") by the petitioner - original accused

for an appropriate order quashing and setting aside the complaint being criminal complaint No. 0/227 of 2003 registered before the Chief Judicial Magistrate, Vadodara.

2. A criminal complaint has been filed by the respondent No.2 - herein in the Court of Chief Judicial Magistrate, Vadodara being Criminal Complaint No.0/227 of 2003 against the petitioner - original accused for the offence punishable under Sections 406, 420, 465, 467, 468 and 471 of the Indian Penal Code. In the said complaint, learned Chief Judicial Magistrate, Vadodara has passed an order for inquiry under Section 202 of the Cr.P.C. and has directed the P.I., Gorva Police Station, Vadodara City to submit the report. Being aggrieved and dissatisfied with the same, the petitioner - original accused has preferred the present application under Section 482 of the Cr.P.C.

3. Ms.Avani Mehta, learned Advocate appearing on behalf of the petitioner - original accused has submitted that for the same offence and on the same cause of action, earlier one criminal complaint was

filed in the Court of Chief Judicial Magistrate, Vadodara being Criminal case No. 0/67 of 2002 by one Hardik Trading Company through Smt.Yoginiben Parekh, wife of respondent No.2 - original complainant and in that complaint, the learned trial Court passed an order for inquiry under Section 202 of the Cr.P.C. and the P.I., Gorva Police Station, Vadodara City submitted the report to the learned Chief Judicial Magistrate, Vadodara submitting that no case is made out against the petitioner and considering the same, the learned Chief Judicial Magistrate, Vadodara dismissed the said complaint under Section 203 of the Cr.P.C. Therefore, it is submitted that once the offence and the complaint was investigated by the concerned Investigating Officer and report was submitted, second complaint for the same cause of action and the offence is not maintainable. Therefore, impugned complaint requires to be quashed and set aside. It was submitted that in the previous complaint being No. 0/67 of 2002, it was found after inquiry/ investigation that no case of cheating is made out, second complaint for the same cause of action is not maintainable. Therefore, it is

requested to quash and set aside the impugned complaint.

4. On the other hand Mr.R.C.Kodekar, learned Additional Public Prosecutor and the learned Advocate appearing on behalf of respondent No.2 have opposed the present application and have submitted that earlier the complaint was not filed by the complainant of the present complaint and the same was altogether on different ground. It is submitted that earlier the complaint was filed by one Hardik Trading Company whereas the impugned complaint has been filed by the Hardik Transport Company. It is further submitted that even otherwise considering the decision of the Hon'ble Supreme Court in the case of **Mahesh Chand V/s. B.Janardhan Reddy and Anr.** reported in (2003)1 SCC 734, there is no bar of filing second complaint on the same facts, therefore, it is requested to dismiss the present application.

5. Heard the learned Advocates appearing on behalf of the respective parties.

6. Without entering into larger question

whether first complaint being Inquiry Case No. 67/2002 though was filed by the different complainant was on the same facts and for the same cause of action or not, the question which is required to be considered by this Court is whether second complaint for the same cause of action is maintainable or not. The only submission made on behalf of the petitioner is that in view of earlier complaint being Inquiry Case No. 67/2002 and the report submitted by the Investigating Officer, Gorva Police Station, Vadodara City to the effect that no case of cheating is made out and the same was accepted by the learned Chief Judicial Magistrate, Vadodara, the complaint was dismissed under Section 203 of the Cr.P.C., therefore, second complaint for the same facts is not maintainable. The controversy in question is squarely covered by the decision of the case of **Mahesh Chand** (**supra**) and it is held by the Hon'ble Supreme Court that there is no statutory bar in filing second complaint on the same facts. It is also held that in case where previous complaint is dismissed without assigning any reasons, the Magistrate under Section 204 of the Cr.P.C., may take cognizance of an offence

and issue process if there is sufficient ground for proceedings. It is also observed by the Hon'ble Supreme Court that second complaint on the facts can be entertained in exceptional circumstances viz. where the previous order was passed on an incomplete record or on a misunderstanding of the nature of the complaint or it was manifestly absurd, unjust or where new facts which could not with reasonable diligence, have been brought on record in the previous proceedings, have been adduced.

7. Considering above, now facts of the present case is required to be considered. Considering the order passed by the learned Chief Judicial Magistrate, Vadadora dated 11.06.2002 in Inquiry Case No. 67/2002 dismissing the said complaint, it appears to the Court that no reasons have been assigned by the learned Chief Judicial Magistrate accepting the report and dismissed the complaint under Section 203 of the Cr.P.C. In the second complaint, the learned Chief Judicial Magistrate, Vadadora has passed an order for inquiry under Section 202 of the Cr.P.C. and after investigation, Investigating Officer has to submit the report which is required to be considered

by the learned Chief Judicial Magistrate. Now considering the decision of the Hon'ble Supreme in the case of **Mahesh Chand (supra)**, second compliant is not barred on the same facts and after considering the report in the second case, the Magistrate may arrive at finding as to whether any case for cognizance of the alleged offence has been made out or not. As stated above, while dismissing the earlier application no reasons have been assigned and the learned Chief Judicial Magistrate has accepted the report and dismissed the complaint. Under the circumstances and considering the decision of the Hon'ble Supreme Court in the case of **Mahesh Chand (supra)** the contention on behalf of the petitioner that second complaint requires to be quashed and set aside as the same is not maintainable, cannot be accepted and the impugned complaint is not required to be quashed on that ground.

8. After the conclusion of the inquiry and the report submitted by the I.O., the learned Magistrate will have to arrive at a finding as to whether any case for cognizance of offence alleged has made out or not. Under the circumstances no case is made out

to quash the impugned complaint. The petition fails.  
Rule discharged. Ad interim relief granted earlier  
stands vacated forthwith.

[M.R.Shah, J.]

*satisfy*