

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL MISC.APPLICATION NO. 13836 of 2008****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE RAVI R.TRIPATHI**

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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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MOHMAD GULAM MUNSHI & 3....Applicant(s)

Versus

STATE OF GUJARAT & 1....Respondent(s)

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Appearance:

MR TULSHI R SAVANI, ADVOCATE for the Applicant(s) No. 1 - 4

MR ZUBIN F BHARDA, ADVOCATE for the Respondent(s) No. 2

MS CM SHAH, ADDL. PUBLIC PROSECUTOR for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE RAVI R.TRIPATHI**

Date : 28/06/2013

ORAL JUDGMENT

1. The applicant Mohmad Gulam Munshi and three others are before this Court praying that:-

"14. (B) Be pleased to quash and set aside the complaint dated 9/2/2005 filed before the 1d. Chief Judicial Magistrate, Navsari which is registered as Criminal Case No.13 of 2005 filed

by the Res. No.2 for the offences punishable u/s 420, 451, 504, 506(1) and 114 of the Indian Penal Code.

(C) Be pleased to quash and set aside the order dated 31/1/2006 passed in Misc.Criminal Case No.13 of 2005 by which process is issued against the applicants.

2. The case of the applicants is set out from para-5 onwards. Paras-5 to 8 read as under:-

"5. The applicants state that respondent no.2 herein filed a private complaint before the Ld. J.M.F.C. Navsari inter alia alleging that present applicants are residing at London in U.K. It is also alleged in the complaint that in the year of 1999, all the applicants came to India and they have purchased a house bearing no.1043/1, which is situated at Ghantivad, Charpul, Navsari from one Hirabhai Dahyabhai Patel by registered sale deed. The applicants state that complainant and present applicants are relatives. It is also alleged in the complaint that applicants came to India in the period of dated 4/2/2005 and taken away possession of the house though the same was locked and was in the possession of complainant and her family members. It is also alleged in the complaint that as the disputed house was not in a position to reside in to it and therefore, husband of the complainant had renovated the same by making expenses of Rs.2,00,000/-. It is also alleged in the

complaint that when applicants came in India in the year 2003, the husband of complainant demanded Rs.2,00,000/- from the applicants as the amount was expended for renovation of house of applicants. It is also alleged that in response to demand made by the complainant's husband, the applicants said that as we do not reside in India and therefore, you may use it and also may buy it as per the market prize of Rs.2,11,000/-. It is also that for the purpose agreement to sale is also executed in presence of witnesses on 23/6/2003. It is also stated that complainant had paid Rs.1,61,000/- by way of Cheque no.047273 Central Bank of India, Navsari Branch to applicants. It is also alleged that the amount of Rs.1,61,000/- is also withdrawn by the applicants but registered sale deed was not executed between them. It is also alleged that that applicant no.1 did not signed the agreement to sale dated 23/6/2003. It is also stated that complainant is paying electricity bill, tax bill etc. since last 4 to 5 years. It is also stated that applicants have taken away the possession of the disputed property by braking lock from period dated 4/2/2005 to 8/2/2005.

6. The applicants state that present applicants never executed any agreement to sale dated 23/6/2003 in favour of complainant or any one. The applicants state that any of the applicants does not make signature upon the said agreement to sale dated 23/6/2003. The applicants state that complainant and her husband have forged the same for the purpose of

snatching away the valuable property of the applicants. The applicants state that for the purpose of creating the right over disputed property, respondent no.2 and her companions made agreement to sale dated 23/6/2003. The applicants state that they do not want to sale out the property even as on today. The applicants state that they have not received any amount in respect to sale transaction, which is mentioned in the complaint. The applicants state that when signature is not made any of the party upon any of the documents, it can not be said that document is executed.

7. The applicants state that it is stated in the complaint that consideration of the disputed property was fixed as Rs.2,11,000/- as per market value by both the parties. The applicants state that respondent no.2 has also stated in her complaint that payment of Rs.1,61,000/- is made by cheque no.047273 of Central Bank of India, Navsari Branch. It is also stated that Rs.2,00,000/- was to be settled against the amount of consideration, which was expended by the husband of respondent no.2, for the purpose of renovation of disputed property. The applicants state that as per the say of complainant i.e. respondent no.2, that amount of consideration was fixed at the rate of Rs.2,11,000/- which was market prize than way should complainant paid Rs.3,61,000/- (Rs.2,00,000/- from expenses + Rs.1,61,000/- by cheque) to applicants for disputed property. The applicants state that respondent no.2

should have to pay only remaining amount of Rs.11,000/-. The applicants state that entire story of the complainant is fabricated and false. The applicants state that ld. Trial Court ought to have considered all these things before issuing process and before taking cognizance in the complaint.

8. The applicants state that in fact applicants given loan to husband of complainant for the purpose purchasing Truck as they are relatives. The applicants state that for purpose of repaying some of the loan amount, husband of the respondent no.2 issued a cheque to applicant no.1, which is mentioned in the complaint. The applicants state that respondent no.2 and her husband do not want to repay the remaining amount of loan, present complaint is filed against all the family members. The applicants state that assuming for a while, suppose that if offence alleged in the complaint is committed that also applicant nos.2 to 4 have not played any role in the offence. The applicants state that therefore, looking to this fact, it can be seen that intention of respondent no.2 is not clear. The applicants state that respondent no.2 filed complaint for the purpose of harassing whole family and therefore, complaint in question deserves to be quashed and set aside."

3. The matter was called out in the first round. Learned Advocate Mr.Savani for the applicants was not present. The matter was kept back. Even at the second

call, learned Advocate Mr.Savani is not present.

4. On perusal of the contents of the complaint, it is found that the same cannot be quashed and the Court below shall proceed in accordance with law. The additional factor which is required to be noted, as pointed out by learned Advocate Mr.Bharda for respondent No.2, is that, on perusal of the complaint, learned Chief Judicial Magistrate, Navsari has framed an opinion that the matter requires consideration and therefore, he issued process. The application is rejected. Rule is discharged. Interim relief granted earlier is vacated.

(RAVI R.TRIPATHI, J.)

SHITOLE