

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 12194 of 2022**

=====

NIMESHBHAI JASUBHAI PARIKH

Versus

STATE OF GUJARAT

=====

Appearance:

JAY R SHAH(8428) for the Applicant(s) No. 1

MR JINESH H KAPADIA(5601) for the Applicant(s) No. 1
for the Respondent(s) No. 2,3,4,5,6

MR UTKARSH SHARMA, APP for the Respondent(s) No. 1

=====

CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA**Date : 27/10/2023****ORAL ORDER**

1. Heard learned counsel Mr.J.R. Shah appearing for and on behalf of the applicant.
2. This application is directed against the order dated 17.09.2022, passed by the learned 6th Additional Sessions Judge, Khambhat in Criminal Revision Application No.12 of 2020, whereby the revision filed against the order of the Judicial Magistrate Court at Khambhat, passed in Inquiry Case No.220 of 2013, has been rejected by confirming the order of the Magistrate Court.
3. Brief facts are that the private complaint against the private respondents under Sections 120(B), 384, 389, 457, 392, 395 and 114 of the Indian Penal Code was filed *inter alia* alleging that the possession of rented business premises was illegally taken away by the private respondents and while taking the possession, goods lying

in the premises, they have taken away the goods, thereby, they committed an offence of theft and robbery.

4. In these background facts, the private complaint before the Court at Khambhat was being filed which came to be registered as Criminal Inquiry No.220 of 2013. The learned Court at Khambhat, after considering the police report, and objections filed by the applicant herein, dismissed the complaint under Section 203 of the Cr.P.C. observing that no sufficient ground exists for proceedings with the complaint.
5. The dismissal order dated 08.03.2018, carried in the Sessions Court by preferring the Revision Application. The Revisioal Court, vide its order dated 17.09.2022, does not find any error with the order of the Trial Court and rejected the revision application.
6. Mr.Jay Shah, learned counsel, assailing the order of the Court-below, submitted that the applicant was the tenant of the disputed property and had paid Rs.14,29,000/- to Jayeshbhai Babubhai Gadhiyali and since 2008, he was doing his business in the disputed property. In this context, he submitted that the respondents had hatched the conspiracy to take away the possession of the property and by illegal means, they took away the possession and the goods lying in the property were also taken away by the respondents.
7. In the aforesaid premise, learned counsel Mr.Shah

submitted that the Courts-below failed to appreciate the facts about the permissive possession of the applicant for which he paid Rs.14,12,000/- to Jayeshbhai Gadhiyali and therefore, considering the evidence on record and the allegations made in the complaint, there is sufficient ground for proceedings for the alleged commission of the offence and thus, the Trial Court failed to consider the allegations made in the complaint and on the basis of the police report, the findings for dismissal of the complaint being recorded, which cannot be sustainable in eye of law and thus, case is made out for exercising extraordinary jurisdiction of this Court.

8. In the aforesaid contentions, learned counsel Mr.Shah submitted that the matter deserves consideration and it may be admitted.
9. Having heard learned counsel for the applicant and perusal of the allegations made in the complaint and findings recorded by the Courts-below, this Court does not find any ground to interfere with the orders impugned. The private complaint has been filed after one and half years from the date of the incident. The learned Trial Court, after considering the documentary evidence, came to a conclusion that the dispute raised in the complaint is of civil nature and considering the right claim by the applicant, the Civil Court having jurisdiction to decide the issue.

10. For the aforesaid premise, this Court is of the view that the learned Trial Court while examining the allegations made in the complaint, came to a conclusion that the allegations made in the complaint are not sufficient to proceed against the accused. In such circumstances, at the time of issuing the process, the Magistrate is mainly concerned with the allegations made in the complaint and satisfied with the facts whether there are sufficient grounds for proceedings against the accused or not? Thus, considering the scope of inquiry, the learned Courts below have not committed any error either on law or on facts while dismissing the complaint.
11. For the reasons recorded, no case is made out for exercising the extraordinary jurisdiction of this Court. Accordingly, the application, at the admission stage, fails and is **dismissed**.

Rakesh

(ILESH J. VORA,J)