



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE FIR/ORDER) NO. 8723 of 2024

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GAURANGBHAI PUSHPAKANTBHAI SHAH & ANR.

Versus

STATE OF GUJARAT & ANR.

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Appearance:

MR KISHAN PRAJAPATI(7074) for the Applicant(s) No. 1,2

for the Respondent(s) No. 2

MS DIVYANGNA JHALA, ADDL. PUBLIC PROSECUTOR for the
Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 06/05/2024

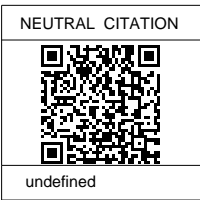
ORAL ORDER

[1.0] Learned advocate Mr. Mahesh K. Pujara states that he has instructions to appear on behalf of the original complainant and seeks permission to file his Vakalatnama, which is granted. Heard learned advocates for the respective parties.

[2.0] **RULE.** Learned advocates waive service of note of rule on behalf of the respective respondents.

[3.0] Considering the facts and circumstances of the case and since it is jointly stated at the Bar by learned advocates on both the sides that the dispute between the parties has been resolved amicably, this matter is taken up for final disposal forthwith.

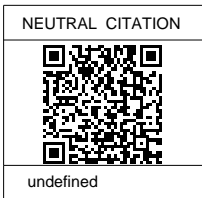
[4.0] By way of this petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "CrPC"), the



petitioners have prayed to quash and set aside the FIR being **CR No.11191032211973 of 2021 registered with Maninagar Police Station, Ahmedabad City** for the offences punishable under Sections 420, 465, 467, 468, 471 and 120(B) of the Indian Penal Code, 1860 as well as the proceedings of Criminal Case No.52891/2022 pending before the learned Additional Chief Metropolitan Magistrate, Court No.15, Ahmedabad and to quash all other consequential proceedings arising therefrom.

[5.0] Learned advocates for the respective parties submitted that during the pendency of proceedings, the parties have settled the dispute amicably and pursuant to such mutual settlement, the original complainant has also filed an Affidavit dated 06.05.2024 which is taken on record. In the Affidavit, the original complainant has categorically stated that the dispute with the petitioners has been resolved amicably and that he has no objection, if the present proceedings are quashed and set aside since there is no surviving grievance between them.

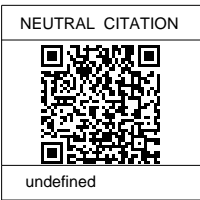
[6.0] Going through the impugned FIR which is filed at the instance of respondent No.2, it is alleged that accused persons by hatching conspiracy forged the Will of the maternal grandfather of the respondent No.2 despite knowing the fact that respondent No.2 and his younger brother were having right in the land concerning the Will have duped the complainant and his younger brother Deep by creating false and fabricated pedigree of the concerned property and on the basis of the same, got entered their names in the property card and thereby committed



the offences as alleged. Pursuant to the filing of FIR, after conclusion of investigation, charge-sheet came to be filed which culminated into Criminal Case No.52891/2022, which is pending adjudication before the learned Additional Chief Metropolitan Magistrate, Court No.15, Ahmedabad. However, during the trial of the said case, settlement is arrived at between the parties.

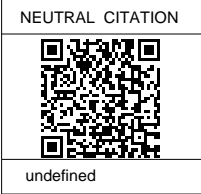
[7.0] It is necessary to consider whether the power conferred by the High Court under section 482 of the CrPC is warranted. It is true that the powers under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage as the Hon'ble Supreme Court has decided in the case of **Central Bureau of Investigation vs. Ravi Shankar Srivastava, IAS & Anr.**, reported in **AIR 2006 SC 2872**.

[8.0] Having heard learned advocates on both the sides and



considering the facts and circumstances of the case as also the principle laid down by the Apex Court in the cases of **(i) Gian Singh Vs. State of Punjab & Anr.**, reported in **(2012) 10 SCC 303**, **(ii) Madan Mohan Abbot Vs. State of Punjab**, reported in **(2008) 4 SCC 582**, **(iii) Nikhil Merchant Vs. Central Bureau of Investigation & Anr.**, reported in **2009 (1) GLH 31**, **(iv) Manoj Sharma Vs. State & Ors.**, reported in **2009 (1) GLH 190**; **(v) Narinder Singh & Ors. Vs. State of Punjab & Anr.** reported in **2014 (2) Crime 67 (SC)** and **vi) and State of Haryana vs. Bhajan Lal** reported in **(1992) Supp (1) SCC 335** as also considering the fact that dispute is private in nature and settlement has been arrived at between the parties and the complainant as well as his younger brother Deep Shah have affidavits dated 06.05.2024 affirming the fact of settlement and therefore, now as the dispute is amicably settled, there is no chance of breach of public tranquility and hence, in the opinion of this Court, the further continuation of criminal proceedings against the present petitioners in relation to the impugned FIR would cause unnecessary harassment to the petitioners. Further, the continuance of trial pursuant to the mutual settlement arrived at between the parties would be a futile exercise. Hence, to secure the ends of justice, it would be appropriate to quash and set aside the impugned FIR and all consequential proceedings initiated in pursuance thereof under Section 482 of the Cr.P.C..

[8.1] Insofar as offence under Section 420 of the IPC is concerned, it is appropriate to refer to the decision of the



Hon'ble Apex Court in the case of **Rekha Jain vs. The State of Karnataka & Anr.** reported in **2022 LiveLaw (SC) 468**, wherein the Hon'ble Supreme Court held that, to make out a case against a person for the offence under Section 420 of IPC, there must be a dishonest inducement to deceive a person to deliver any property to any other person. Further, in the case of **Sarabjit Kaur vs. State of Punjab & Anr.** reported in **(2023)5 SCC 360** has held in paragraph No.13 as follows:

"13. A breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of failure to keep up promise will not be enough to initiate criminal proceedings. From the facts available on record, it is evident that the respondent No.2 had improved his case ever since the first complaint was filed in which there were no allegations against the appellant rather it was only against the property dealers which was in subsequent complaints that the name of the appellant was mentioned. On the first complaint, the only request was for return of the amount paid by the respondent No.2. When the offence was made out on the basis of the first complaint, the second complaint was filed with improved version making allegations against the appellant as well which was not there in the earlier complaint. The entire idea seems to be to convert a civil dispute into criminal and put pressure on the appellant for return of the amount allegedly paid. The criminal Courts are not meant to be used for settling scores or pressurise parties to settle civil disputes. Wherever ingredients of criminal offences are made out, criminal courts have to take cognizance. The complaint in question on the basis of which F.I.R. was registered was filed nearly three years after the last date fixed for registration of the sale deed. Allowing the proceedings to continue would be an abuse of process of the Court."

Further, in the recent decision dated 06.02.2024 of the Hon'ble Supreme Court in the case of **Lalit Chaturvedi & Others vs. State of Uttar Pradesh & Another** rendered in **Criminal**



Appeal arising out of SLP (Cri.) No.13485 of 2023, the Hon'ble Supreme Court has observed as follows:

"In "Mohammed Ibrahim and Others v. State of Bihar and Another"⁴, this Court had referred to Section 420 of the IPC, to observe that in order to constitute an offence under the said section, the following ingredients are to be satisfied :-

"18. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of "cheating" are as follows:

(i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission;

(ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and

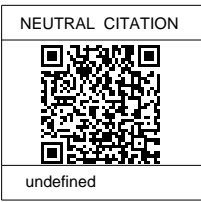
(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.

19. To constitute an offence under section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived

(i) to deliver any property to any person, or

(ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security)."

[9.0] In the result, petition is allowed. The impugned FIR being **CR No.11191032211973 of 2021 registered with Maninagar Police Station, Ahmedabad City** as well as all consequential proceedings initiated in pursuance thereof are hereby quashed



and set aside *qua* the petitioners herein. If the petitioners are in jail, the jail authority concerned is directed to release the petitioners forthwith, if not required in connection with any other case. Rule is made absolute to the aforesaid extent only. Direct service is permitted.

(HASMUKH D. SUTHAR, J.)

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