

2015 (0) AIJEL-HC 233683

GUJARAT HIGH COURT

Hon'ble Judges:K.S.Jhaveri, J.

Asif Gulamnabi Munshi Versus State Of Gujarat

Criminal Miscellaneous Application No. 17205 of 2011 ;
Criminal Miscellaneous Application No. 2151 of 2012 ; *J.Date :- DECEMBER 18, 2015

- INDIAN PENAL CODE, 1860 Section - 406 , 420 , 467 , 468 , 120B
- CODE OF CRIMINAL PROCEDURE, 1973 Section - 482

Indian Penal Code, 1860 - S. 406, 420, 467, 468, 471, 120B - Code of Criminal Procedure, 1973 - S. 482 - quashing of FIR - delay - abuse of process of Court - allegation of breach of trust and cheating with the complainant by selling land - there is a gross delay in lodging complaints - respondent no. 2 not in a position to explain plausibly the reason for such inordinate delay - criminal complaints filed by complainant seems to be misuse of the process of law and it only seems to be filed to avoid the liability of payment - this is purely a civil dispute - inherent jurisdiction of High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice - impugned complaints quashed and set aside qua petitioner - petitions allowed.

Imp.Para: [8]

Cases Referred To :

1. R.P.Kapur V/s. State Of Punjab, AIR 1960 SC 866
2. State Of Haryana And Others V/s. Bhajan Lal And Others, 1992 Supp1 SCC 335

Cited in :

1. (Referred To) :- Kirankumar Ratilal Soni Vs. State Of Gujarat, 2017 JX(Guj) 357 : 2017 AIJEL_HC 237527

Equivalent Citation(s):

2015 JX(Guj) 1050 : 2015 AIJEL_HC 233683

JUDGMENT :-

1 The applicants herein have prayed to quash the fir bearing No. 215 & 216 of 2011 filed by before SIT of Sanand Police Station, Ahmedabad (Rural) for the alleged offences under sections 406, 420, 467, 468, 471 & 120 (B) of the Indian Penal Code.

2 FIR No. 215/2011 has been filed alleging that the petitioner has committed breach of trust and cheating with the complainant by selling a land bearing Plot No. 87-A-1 of Survey No. 462 situated in the sim of village Telav for Rupees Four lakhs by showing false documents in the year 2001. It is the case of the petitioner that respondent no. 2 had contacted petitioner in the year 2000 and has requested the petitioner to provide land for construction of factory shed as he wanted to start industry in the name of 'Koradia Poultry Field Industries' and he had to submit the project report. It is the case of the petitioner that respondent no. 2 told the petitioner that if a complete file be provided to him for submission of his project he shall be entitled for interest free loan and other benefits. Therefore the petitioner provided various documents to respondent no. 2.

2.1 It is the case of the petitioner that though respondent no. 2 got financial assistance and benefits, he did not pay the amount to petitioner and therefore the petitioner did not permit respondent no. 2 to carry on any construction activity on the land in question. Therefore, respondent no. 2 filed a false complainant after a period of more than ten years. Being aggrieved by the same, the petitioner has approached this court for quashing the said complaint.

2.2 Similarly, FIR No. 216/2011 has been filed by the original complainant - the then Chairman of the Society alleging that though the erstwhile Chairman of the Society - petitioner did not had over the relevant record of the land in question. It is alleged in the complaint that on the letter pad of the Society, though resolution was not passed in General Meeting, resolution no. 3 was prepared illegally, falsely and fraudulently.

3 None appears for the petitioner. Heard learned advocates for the respondents. Learned Advocate appearing for respondent no. 2 has submitted that specific allegations have been made in the complaints and therefore this is not a case to quash the said complaints without any investigation. He has submitted that the court may look into the complaints in its true perspective so as to meet the ends of justice.

4 This court has heard learned advocates for respondents and also perused the papers on record. Looking to the contents of the complaint, it is borne out that there is a gross delay in lodging the complaints. Learned advocate for respondent no. 2 is not in a position to explain plausibly the reason for such inordinate delay.

5 In this connection it would be relevant to refer to a decision of the Apex Court in the case of R.P.Kapur V. State of Punjab, reported in AIR 1960 SC 866. Para 6 of the said decision reads as under:

"Before dealing with the merits of the appeal it is necessary to consider the nature and scope of the inherent power of the High Court under S. 561-A of the Code. The said section saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of

the process of any court or otherwise to secure the ends of justice. There is no doubt that this inherent power cannot be exercised in regard to matters specifically covered by the other provisions of the Code. In the present case the magistrate before whom the police report has been filed under S. 173 of the Code has yet not applied his mind to the merits of the said report and it may be assumed in favour of the appellant that his request for the quashing of the proceedings is not at the present stage covered by any specific provision of the Code. It is well established that the inherent jurisdiction of the high Court can be exercised to quash proceedings in a proper case wither to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person. A third category the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under S. 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained. Broadly stated that is the nature and scope of the inherent jurisdiction of the High Court under Section 561-A in the

matter of quashing criminal proceedings and that is the effect of the judicial decisions on the point."

6 The Apex Court in the case of State of Haryana and others V. Bhajan Lal and others, reported in 1992 Supp(1) SCC 335 has broadly set out the circumstances in which this Court can exercise the power under section 482 of Criminal Procedure Code. Paragraphs 102 and 103 thereof read as under:

"The following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers under Section 482 CrPC can be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formula and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised

(1)Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2)Where the allegations in the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3)Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4)Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5)Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent persons can ever reach a just conclusion that there is sufficient grounds for proceeding against the accused.

(6)Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provisions in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7)Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

7 In the case of Central Bureau of Investigation V. Ravi Shankar Srivastava, IAS and Another, it is held that proceeding instituted on a complaint can be quashed in exercise of inherent power where complaint does not disclose any offence or is frivolous, vexatious or oppressive.

8 It is well settled law that ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. However, considering the overall facts and circumstances of the case, I am of the opinion that the petitioner has made out a case as pointed out in the above referred decisions. The criminal complaints filed by the complainant seems to be misuse of the process of law and it only seems to be filed to avoid the liability of payment. There is no plausible explanation for the inordinate delay in filing the complaint. This is purely a civil dispute. The inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case wither to prevent the abuse of the process of any court or otherwise to secure the ends of justice. In that view of the matter, this court is of the opinion that the impugned complaints are required to be quashed and set aside qua the present petitioner/s.

9 In the premises aforesaid, these petitions are allowed. The criminal complaints being FIR No. 215 & 216 of 2011 lodged by respondent no. 2 before SIT of Sanand Police Station, Ahmedabad (Rural) are hereby quashed and set aside. No order as to costs.