

C.C.No. 127/2016

**Order Below Exhibit - 01 in view of discharge
application at Exhibit - 97 by accused No. 4**

(1) The present complaint case was filed by complainant Mr. Parsotam Veljibhai Baldha against the accuseds for alleged commission of offence under section 465, 467, 468, 471, 474, 406, 120 B and 34 of the Indian Penal Code, 1860 (hereinafter to be referred as "the I.P.C." for short). Exhibit-01 the private complaint was filed on 08-10-2012 by the complainant which was forwarded by the Ld. predecessor for investigation under section 202 of Cr.P.C. On completion of the investigation report was filed. Thereafter, process were issued against the present accuseds under Section 204 of the Code of Criminal Procedure for alleged commission of offence under Section 465, 467, 468, 471, 406, 120 (B) and Section 34 of I.P.C. Thereafter, pre charge evidences were recorded. Prosecution case is that the document at mark 3/6 is a forged document which was executed on 29-09-2010 which contains signature of deceased brother of complainant namely Mahesh Velji Baldha who died on 28-05-2004. The complainant has averred that the consent letter vide mark 3/6 was executed by executing

stamp paper through the notary Mr.Kantilal Bhagvanjibhai Baldha. Attributed with the aforesaid role, the applicant notary was arraigned as accused No. 4.

(2) The applicant/accused No. 4 Mr. Kantilal Bhagvanjibhai Baldha, practicing as notary public has brought the present application at Exh.-97 for his discharge from the charges leveled against him as the offences alleged against him was allegedly committed in the exercise or purported exercise of his functions under the notaries Act.

ARGUMENTS

(3) The Ld. Advocate Mr. B.T.Koyani appearing for the applicant/accused No. 4 submits that accused No. 4 Mr. Kantilal Bhagvanjibhai Baldha is a practicing Advocate and Notary public and the alleged offence pertains to the exercise or purported exercise of his functions under the Act as notary public, therefore, in view of Section 13 of the notaries Act the court can not take cognizance except upon complaint in writing made by an officer authorized by the central Government or a State Government by general or special order in that behalf. He further submits that in the present case the present complaint lacks the procedural lacuna as the complaint has been filed

by the private person and not by the officer authorized by the central Government or a State Government. Therefore,

he has prayed for discharge of the present applicant accused. He has also filed the written submission at Exh. 101. In support of his submission he relies upon the judgment of Hon'ble Gujarat High Court in the case of **Mohmed Yusufbhai Kasambhai Kalavat Vs State of Gujarat, (R/CR.RA/6415/2015)**.

(4) On the contrary, the Ld. Advocate Mr. K.H.Kadari appearing for the complainant submits that the benefit of section 13 can be availed only if the concerned notary public has followed the due procedure while notarizing the document as per section 8 of the Notaries Act. He further submits that the judgment of Hon'ble Gujarat High Court in the case of Mohmed Yusufbhai Kasambhai Kalavat Vs State of Gujarat is not applicable to the facts of the present case as the accused No. 4 has not shown by submitting his notary register before the concerned investigation officer or before this court that he has complied with the required formalities while executing the concerned letter vide mark 3/6 which bears the signature of a dead person. He further submits that as per Section 11(2) a notary public is required to maintain a

notary register and as per Section 11(4) of the Act a notary has to effect the entries of the document notarized by him. He further submits that in the present case the accused No. 4 has not produced the notary register before the investigating officer and more so he has not produced it before the present court to show and prove that he has complied with all the required formalities while notarizing the alleged forged document mark 3/6. He further submits that the accused No. 4 Mr. Kantilal Bhagvanjibhai Baldha who has not complied with the procedure mentioned in the Act therefore he can not be given benefit of Section 13 of the Act and thus he has prayed for rejection of the present application filed by the applicant accused No. 4 for his discharge from the charges level against him in the present complaint. He has filed written submission at Exh. 99. In support of the his submissions he has relied upon the judgment of Hon'ble Madras High Court in the case of **Ganapathyvaratha Subramanian Vs. The State Rep. by the Inspector of police Samayanallur Police Station, Madurai District & 1 other (Cr1. O.P(MD)No. 2669** which states that notary who acts contrary to the procedure under the notaries Act can not claim immunity from prosecution. The Ld. Advocate appearing for the complainant further submits that in the given

facts and circumstances of the present case the judgment of Hon'ble Madras High Court is applicable and the judgment of Hon'ble Gujarat High Court can not be of any benefit to the present applicant accused No. 4.

(5) I have heard the rival contentions of the Ld. Advocates appearing on behalf of the parties. I have also gone through the written submission filed by both the parties at exhibit-99 and 101. I have also gone through the entire case on record.

(6) For convenience, i am extracting Section 13 of the notaries Act, 1952 which reads as under ;

13. Cognizance of offence. -

(1) No court shall take cognizance of any offence committed by a notary in the exercise or purported exercise of his functions under this Act save upon complaint in writing made by an officer authorised by the Central Government or a State Government by general or special order in this behalf.

(2) No Magistrate other than a presidency magistrate or a magistrate of the first class shall try an offence punishable under this Act.

(7) To support the contention of the discharge application at exhibit-97 the Id. counsel appearing for the accused No. 4 placed reliance upon the judgment in **Mohmed Yusufbhai Kasambhai Kalavat Vs. State of Gujarat, (R/CR.RA/6415/2015)** and he drawn to my attention on this judgment. That was a case in which a practising Advocate and Notary approached the Hon'ble Gujarat High Court for discharging him from the Criminal prosecution involving offenses under sections 363, 366, 376, 466, 471, 465 and 114 of the Indian Penal Code. In that case, while dealing with the scope of Section 13(1) of the notaries Act and relying and referring judgments in the case of **Ashokbhai Rameshchandra Ghantivala Vs. State of Gujarat and Ors. [2009(2)GLH 491]** and judgment passed in Special Criminal Application No. 575 of 2012 and allied matters in **Amrutbhai Sambhubhai Patel Vs. State Of Gujarat & 1** stated that even if an offence is committed by a notary while acting or purporting to Act in the discharge of his functions under the Act, a complaint can be lodged only as provided under section 13 of the Act. Thus, any offence committed by a notary acting or purporting to Act in discharge of his functions under the Act would fall within the ambit of the section and a court can take cognizance of such offence only if the complaint is made in the

manner laid down in the section. Where the complaint has not been filed by the authorised officer then it is infirm in law for being not in accordance with Section 13 of the Act.

(8) The Hon'ble Kerala High Court **V.P.Jyolsna Vs. The state of Kerala, Cr1.MC.No.4518 of 2014** has observed that no court shall take cognizance of an offence committed by a notary public in the exercise of his functions under the Act except when a complaint is made in writing by an authorised officer of state or central Government by special or general order. The Hon'ble court observed that the bar mentioned under Section 13 of the notaries Act is mandatory and if no protection is granted to notaries then it become difficult for them to perform their duties. The Hon'ble High Court also observed that it is the prerogative of the criminal court to find out whether allegations made against a notary public are related to the official duties performed by a notary as mentioned under Section 8 of Notaries Act. The Hon'ble Court further observed that the court should apply its judicial mind to determine whether the subject matter of the complaint is related to the official Act of the notary or something beyond his/her official duty. If it is determined that acts done by the notary public

were beyond his/her official duty, then there is no need to take sanction under the Act. After considering the allegations made against the notary, the Hon'ble court opined that a notary could not be expected to know every person in order to notified a document in his notarial register. The Hon'ble Kerala High Court in this judgment (Supra)concluded that the bar provided under Section 13(1) of the notaries Act is mandatory and no court is allowed to take cognizance of an act done by a notary while dispensing their official duty.

(9) Thus, it is found that an authorization of an officer of Central/state Government is mandatory requirement of law for institution of valid complaint against a notary public for the exercise or purported exercise of functions under the Act in view of the mandatory wording of "no court" in section 13 (1) of the Act. Section 13 (1) of the Notaries Act, 1952 is an express bar in taking cognizance of any offence committed by notary in the exercise or purported exercise of his functions under the Act except upon complaint in writing made by an officer authorized by the central Government or a state Government by a general or special order in that regard. So, in view of the settled position of law discussed

above, there would not be any room for doubt to conclude that bar provided under Section 13(1) is mandatory and no court shall take cognisance of any offence committed by a notary public in exercise or purported exercise of his functions under the act upon a complaint in writing made by an officer authorised by central Government or a state Government by a general or special order in that behalf. Admittedly, accused No. 4 Mr. Kantilal Bhagvanjibhai Baldha is a notary public and he has also produced his notary certificate vide mark 103/1 and he practises in various Civil and Criminal courts in Rajkot district. The document vide mark 3/6 was executed by him while acting in the discharge of his functions under the notaries Act. Therefore, the cognizance of the offence can not be taken by the court against the applicant accused No. 4 in the given facts and circumstances of the present case. Furthermore, the decision in **Mohmed Yusufbhai Kasambhai Kalavat Vs State of Gujarat** by the Hon'ble Gujarat High Court is squarely applicable to the facts of the present case as it is well settled principle of law that if there is conflicting views rendered by different High Courts, the view taken by the jurisdictional High Court is binding in the Jurisdictional area of the respective High Court.

(10) Thus, in view of the foregoing discussion and in the light of the above exposition of the law, this court is inclined to pass the following ;

O R D E R

(1) In the reasult, the present application is allowed and accused No. 4 Mr. Kantilal Bhagvanjibhai Baldha is hereby discharged so far as the applicant/accused No. 4 is concerned. The case shall proceed further in accordance with law so far as the other co-accuseds are concerned.

(2) No order as to costs.

**Signed and pronounced in the open court on
this 16th day of October, 2021.**

Place:Jamkandorna

Date: 16-10-2021

Sd/-

Gopal Lal Pareek

Judicial magistrate, Jamkandorna

Judge Code-01404