

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL MISC.APPLICATION NO. 6203 of 2022**

SHITAL DUSHYANT SHUKLA

Versus

STATE OF GUJARAT

Appearance:

MR AB GATESHANIYA(3766) for the Applicant(s) No. 1,2

for the Respondent(s) No. 2

PUBLIC PROSECUTOR for the Respondent(s) No. 1

**CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA****Date : 20/04/2022****ORAL ORDER**

By way of this application, the applicants herein have prayed for quashing of Criminal Case No. 98971/2021 pending before the Court of learned Additional Chief Metropolitan Magistrate, Ahmedabad, wherein, the learned trial Court vide order dated 18.08.2021 issued summon for the offence under Sections 420 read with section 114 of IPC in terms of Section 204 of the Code of Criminal Procedure.

2. This Court has heard Mr.A.B.Gateshaniya, learned counsel for the applicants herein.

3. Respondent No.2 herein filed a private complaint, which was initially registered as Criminal Inquiry No.59/2008 and after taking into consideration the evidence of the complainant and witnesses, trial Court came to a conclusion that, there is sufficient ground for proceedings and accordingly, summons has been issued for the offence as referred above.

4. It is submitted that, no any offence under Section 420 of IPC is made out as no any amount is due as alleged by the complainant. It is further submitted that, for the same transaction, the respondent

No.2 filed another complaint, which was registered as Criminal Inquiry No.53/2008, wherein, the trial Court dismissed the complaint in terms of Section 203 of the Code.

5. Having heard learned counsel for the applicants and upon perusal of the case record, this Court is of view that, the disputed transactions have been bifurcated in two parts, for which, two separate complaints for the same transactions having been filed by respondent No.2. In one complaint, considering the police report, learned Trial Court was thought fit to dismiss the complaint and accordingly, same was dismissed and the second complaint dealt with by the same judge and in the same set of facts, cognizance for the alleged offence has been taken and accordingly, summons is issued as referred above. Thus, *prima facie*, judicial discretion has not properly exercised by the trial Court while issuing process.

6. In view of the above, Let **Rule** be issued for final hearing, returnable on **02.05.2022**. Meanwhile, ad-interim relief in terms of para 16 [C] is granted. Direct Service is permitted.

**(ILESH J. VORA,J)**

SUCHIT