

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 4176 of 2015**

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RAMANBHAI BHOLIDAS PATEL & 1....Applicant(s)

Versus

STATE OF GUJARAT & 1....Respondent(s)

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Appearance:

MR IH SYED FOR MR.CHIRAG B UPADHYAY, ADVOCATE for the
Applicant(s) No. 1 - 2MR LB DABHI, LEARNED ADDITIONAL PUBLIC PROSECUTOR for the
Respondent(s) No. 1

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CORAM: **HONOURABLE SMT. JUSTICE ABHILASHA
KUMARI****Date : 10/07/2015****ORAL ORDER**

1. This petition arises from a challenge to the order dated 12.04.2006, passed by the learned Additional Judicial Magistrate, First Class, Ahmedabad (Rural), in Criminal Case No.576 of 2005, below Exhs.17 and 18 and the order dated 30.08.2006, passed by the learned Additional Sessions and Fast Track Judge, Court No.8, Ahmedabad (Rural), in Criminal Revision Application No.24 of 2006.

2. Mr.I.H. Syed, learned advocate for Mr.Chirag B.

Upadhyay, learned advocate for the petitioners, has made detailed submissions, the gist of which is as below:

(1) The Trial Court, in its order dated 12.04.2006, passed below the application at Exhs.17 and 18, while rejecting the said application for discharge under Section 239 of the Code of Criminal Procedure, 1973 ("the Code" for short) has recorded two findings against the petitioners, namely, the statement of co-accused and a document purported to be an Agreement. The said application has been rejected on the above two grounds. The Sessions Court has rejected the Revision Application of the petitioners merely by upholding the order of the Trial Court, but has added findings of its own by stating that there are certain documents against the petitioners, which finding is a factually incorrect finding.

(2) The only document that is sought to be pressed into service against the petitioners, is an Agreement dated 10.04.1990, purportedly signed by the petitioners. However, if the contents of the said Agreement are perused, it is clear that no prudent

person would enter into such an Agreement, which is illegal on the face of it.

(3) This Agreement has been purportedly recovered on 13.08.2004, from another place and in connection with another offence, having no connection to the present offence. This Agreement was not in the hands of the Investigating Agency in the present offence until 07.01.2005, as is clear from the Panchnama drawn up on that date. The Agreement was handed over by the Head Constable of the Local Crime Branch, Gandhinagar, to the Investigating Officer of the present case on 07.01.2005. This aspect assumes significance because the petitioners were arrested on 08.12.2004, when this Agreement was not even available with the Investigating Agency. This clearly shows that the petitioners have been falsely implicated by bringing in this document at a later stage.

(4) In any event, this document has no connection to the offence in which the petitioners have been implicated, namely, C.R.No.I-202 of 2004, which is specifically for the offences in connection with

Revenue Survey Nos.1220 and 1221/01 at Ognaj.

(5) There are no documents on record to indicate the involvement of the petitioners in connection with offences pertaining to these survey numbers. Moreover, there are no revenue entries connecting the petitioners to the survey numbers in question. The papers of the charge-sheet do not connect the petitioners, directly or indirectly, with the specific offences alleged to have been committed in connection with these specific survey numbers.

(6) The so-called document, that is, the Agreement dated 10.04.1990, has not been affirmed before the Notary and nor has it been executed on a judicial stamp paper. The petitioners have denied and disputed their signatures on the said document. There are conflicting opinions of the handwriting expert regarding the signatures of the petitioners.

(7) The High Court, while releasing the petitioners on bail vide order dated 01.02.2005, passed in Criminal Misc. Application No.11811 of 2004, has

observed that this so-called Agreement has no significance, insofar as the offence against the petitioners are concerned. This aspect has not been looked into by the Trial Court or the Sessions Court while passing the impugned orders.

(8) Recently, by order dated 01.02.2014, the Sessions Court, in the case of a co-accused, has set aside the order of the Trial Court and remanded the matter back for fresh hearing. However, in the present case, the impugned orders of the Courts below are being challenged on merits.

(9) That no statement of the co-accused has been placed on record along with the papers of the charge-sheet or supplied to the petitioners. Even assuming that there is such a statement, it cannot be pressed into service for the framing of the charge, without corroboration by other material on record.

(10) In support of his submissions, learned advocate for the petitioners has placed upon the following judgments:

(1) **Suresh Chhotalal Verma Vs. State of Gujarat** reported in **2001(1) GLH 797** (Paragraphs-4 and 5)

(2) Judgment dated 19.10.2004 passed by this Court in Criminal Revision Application No.573 of 2004

(3) **Suresh Budharmal kalani Alias Pappu Kalani Vs. State of Maharashtra** reported in **(1998) 7 SCC 337** (Paragraph-6)

(11) The Agreement is the sole document on which the prosecution has pitched its case against the petitioners. It is a document that has been recovered after fifteen years of its purported execution, from another place, and in connection with another offence. It does not pertain to the survey numbers of land that are the subject matter of the allegations contained in the FIR in question. Moreover, it is a xerox copy and not an original. Neither is it a notarized or registered copy. As such, it is a document having no legal or evidentiary value, that is totally unconnected with the offence in which the petitioners are sought to be involved, which aspect has not been taken into consideration by both the Courts below.

(12) The petitioners have not derived any wrongful gain in any manner and this is also not the case of the prosecution. If the contents of the Agreement are read, it would be clear that no reasonable man would execute such a document which has no legal bearing on the case in hand.

(13) The Sessions Court, in the impugned order, has stated that there are certain documents against the petitioners, which is a wrong finding as, apart from the so-called Agreement discussed by the Trial Court, no other document connects the petitioners with the offences alleged against them.

(14) The petitioners have been falsely implicated by first arresting them without obtaining the document which is sought to be used against them, and then introducing the said document at a later stage and, that too, through a Police Constable of the Local Crime Branch, Gandhinagar.

(15) That this Court under Articles 226 and 227 of the Constitution of India, read with Section 482 of the

Code, can certainly examine the validity of the orders of the Trial Court and the Sessions Court regarding a discharge application, as is clear from the judgment in the case of **G. Sagar Suri And Another Vs. State of U.P. And Others** reported at (2000) 2 SCC 636.

(16) Looking to the facts and circumstances and the aspect that the document used against the petitioners does not connect them to the alleged offence and as the petitioners are being falsely implicated, the matter requires consideration and the petitioners are required to be protected by this Court.

3. Opposing the submissions advanced on behalf of the learned advocate for the petitioners, Mr.L.B. Dabhi, learned Additional Public Prosecutor, has submitted as below:

(1) There are concurrent findings of two Courts against the petitioners. It is not the case of the other side that the findings of the Courts below are perverse or malicious, therefore, this Court, exercising powers under Article 227 of the

Constitution of India, may not disturb the findings of the Courts below.

(2) In support of this submission, reliance has been placed upon the following judgments:

(1) ***P. Vijayan Vs. State of Kerala And Another*** reported in (2010) 2 SCC 398

(2) ***Yogesh Alias Sachin Jagdish Joshi Vs. State of Maharashtra*** reported in (2008) 10 SCC 394

(3) While framing the charge, the Court has to see whether there is an element of suspicion about the commission of the offence against the accused persons, or not. It is not the stage for the appreciation of evidence, therefore, as per the findings of both the Courts below, when a prima-facie case is made out, the charge against the petitioners can be framed.

(4) Whether, or not, the statement of a co-accused can be believed, is an aspect to be appreciated at the stage of trial. As per Section 10 of the Evidence Act, 1872, a statement of a co-accused can be believed

against the other co-accused. In support of this contention, reliance has been placed upon the following judgments:

(1) ***Chandrakant Meghjibhai Daki Vs. State of Gujarat*** reported in **2008(2) GLR 1146**

(2) ***Sidharth And Others Vs. State of Bihar*** reported in **(2005) 12 SCC 545**

(5) That a statement of a co-accused can be used in a case of conspiracy, though with corroboration from other evidence. In the present case, there is a charge of Section 120B of the Indian Penal Code against the petitioners, which is a substantive offence of its own, which can be proved by the statement of a co-accused.

(6) The orders of the Trial Court and the Sessions Court have dealt with all the submissions advanced before the said Courts, therefore, it is not a case of non-application of mind.

(7) The aspect that there is only a xerox copy of the

Agreement on record is not relevant as the original has been sent to the Forensic Science Laboratory. As per Section 65 of the Evidence Act, secondary evidence can be produced and proved before the concerned Court, though it may not be relevant at this stage whether it can be proved or not.

4. In rebuttal, Mr.I.H. Syed, learned advocate for the petitioners, has placed reliance upon a judgment in the case of **Haricharan Kurmi And Another Vs. State of Bihar AIR 1964 SC 1184**, by submitting that the confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the Court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusion deducible from the said evidence.

5. This Court has heard the learned counsel for the respective parties, at length and considered the submissions advanced at the Bar.

6. After deep consideration, the following relevant aspects emerge:

(1) Whether a charge in a criminal trial can be framed against the accused by the Trial Court only on the basis of a statement of a co-accused recorded under Section 161 of the Code?

(2) Whether a charge can be framed on the basis of a photocopy of an alleged Agreement which was executed about fifteen years prior to the commission of the offences alleged in the FIR, the signatures on which are disputed and which does not mention anything of the survey numbers regarding which the offence has been registered.

7. Upon perusal of the documents on record, including the papers of the charge-sheet, it prima-facie appears that insofar as the Agreement dated 10.04.1990 is concerned, it makes no mention regarding the survey numbers of the land that has been mentioned in the FIR pertaining to this offence. In fact, if the said Agreement is perused, it does give rise to an impression that no prudent man would execute such an Agreement, which is blatantly illegal. Whether this

Agreement dated 10.04.1990 can be connected with the offences alleged to have been committed in the year 2004, in respect of specific survey numbers, requires deeper consideration.

8. It is no doubt true that at the time of deciding a discharge application, the Trial Court is to consider whether the material on record gives rise to a suspicion, or a grave suspicion, regarding the involvement of the accused persons in the commission of the alleged offence. Meaning thereby, that the suspicion should relate to the offence in question.

9. Whether the so-called Agreement executed fifteen years prior to the offence, which does not mention anything regarding the survey numbers of land in respect of which the offences are alleged to have been committed, can be said to give rise to a suspicion for the framing of the charge, thereby connecting the petitioners to the offences alleged, is another aspect that requires deeper consideration.

10. It may be true that while exercising powers under

Article 227 of the Constitution of India read with Section 482 of the Code, this Court may not go into the appreciation of evidence where there are concurrent findings of fact, in the context of a discharge application. However, at the same time, it cannot be lost sight of that the purpose, intent and object of Section 482 of the Code is to secure the ends of justice and to prevent the abuse of the process of any Court.

11. The learned advocate for the petitioners has raised a ground that the petitioners were arrested on 08.12.2004 and a copy of the Agreement was handed over by the Constable of the Local Crime Branch, Gandhinagar, to the Investigating Officer of the present offence only on 07.01.2005, much after their arrest. This aspect further requires deeper consideration in the context of securing the ends of justice, insofar as Section 482 of the Code is concerned.

12. The material on record that has been considered by the Courts below while forming an opinion regarding the rejection of the discharge application, would have

to relate to the offences that have been alleged against the petitioners, disclosing some connection between the said material and the alleged offence. Whether the impugned orders would stand the scrutiny of law on this aspect is a question to be considered by this Court.

13. The petitioners are disputing their signatures on the Agreement. However, there appears to be no conclusive finding regarding this aspect as there appears to be conflicting opinions of the handwriting experts. This aspect would also deserve some thought.

14. Taking into consideration the entirety of the facts and circumstances of the case and the aspects discussed hereinabove, this Court is of the view that the learned advocate for the petitioners has succeeded in making out a prima-facie case for the admission of the petition and grant of interim relief. Hence, the following order:

Issue Rule.

Interim relief in terms of Paragraph-14(D) is

granted.

Mr.L.B. Dabhi, learned Additional Public Prosecutor, waives service of notice of Rule for respondent No.1.

(SMT. ABHILASHA KUMARI, J.)

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