

Gujarat High Court

Brijeshkumar Maheshbhai Patel vs State Of Gujarat on 13 June, 2023

Bench: Samir J. Dave

R/SCR.A/6590/2023

ORDER DATED: 13/06/2023

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 6590 of 2023

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BRIJESHKUMAR MAHESHBHAI PATEL  
Versus  
STATE OF GUJARAT

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Appearance:

MR MA KHARADI(1032) for the Applicant(s) No. 1

for the Respondent(s) No. 2

MR BHARGAV PANDYA, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE SAMIR J. DAVE

Date : 13/06/2023

ORAL ORDER

1. By way of present petition, petitioner has requested to quash and set aside the FIR being CR No. 11207077230198 of 2023 registered with Damavav Police Station, District Panchmahal for the offence punishable under Sections 409 and 114 of the Indian Penal Code as well as all the subsequent proceedings in connection thereof.

2. Brief facts of the present case are as under: 2.1 As per the impugned FIR, the allegations leveled against as many as 22 persons, arraigned as accused, mainly attributes a misappropriation of RS. 38,26,645/- by alleging that while implementing the "MNREGA" scheme as many as 779 duplicate job cards were used for the persons residing in the R/SCR.A/6590/2023 ORDER DATED: 13/06/2023 Mallu Gram Panchayat. Though, the persons arraigned as accused were known to such duplication of the job cards, no care or special care was taken and they allowed the persons having duplicate job cards to earn through such duplicate job cards That, petitioner was appointed as Assistant Programme Officer and worked on the said post from 28.01.2013 to 01.02.2014. The said officer has not taken care of the implementation of the scheme and due to the lack of supervision and dereliction of duty, the said officer is responsible. That, being aggrieved by and dissatisfied with the lodging of the impugned FIR, petitioner seeks to file this petition for quashment of the FIR.

3. Heard learned advocate for the petitioner.

4. It was submitted by learned advocate for the petitioner that the that the impugned FIR is illegal, improper, against the provisions of law, against the facts and circumstances o the case, against the settled legal position and has been filed in clear abuse of process of law. That the First Informant while lodging the impugned FIR has tried to attribute malice to the present petitioner in as much as the role attributed to the petitioner clearly falls within the service jurisprudence and not in the criminal jurisprudence. Though the First Informant being the Taluka Development Officer knows that in managing R/SCR.A/6590/2023 ORDER DATED: 13/06/2023 the entire "MNREGA" scheme and the role of the Taluka Development Officer is very limited, still however, maliciously names of the various Taluka Development Officers have been given to see that the career of all the officers is spoiled and if the officers are retired then their post retiral benefits are obstructed.

5. Learned advocate for the petitioner submits that for lodging of the Fir, the muster showing the officers/employees worked under Ghoghamba Taluka Panchayat between 31.08.2009 and 01.02.2014 were collected and accordingly, the complaint is filed. That, it is undisputed fact that the petitioner joined the Ghoghamba Taluka Panchayat being Assistant Programme Officer on 11.04.2013. That the initial data entries were done by the outsourced people, who committed many mistakes in recording double entries. Similarly, the FIR discloses that in June 2011, e-musters were introduced. However, the First Informant has lodged the FIR after the long delay of more than 10 years for which no explanation is given either in the Column No.8 or in the body of the FIR. Instead, the Column No.8 indicates that the First Informant has come to lodge the FIR today and therefore, the same has been registered today. That, in view of the law laid down by the Hon'ble Supreme Court, the delay in lodging the R/SCR.A/6590/2023 ORDER DATED: 13/06/2023 FIR plays a vital role, which cannot be ignored. In view of the law laid down by the Hon'hle Supreme Court while considering the petition to quash the FIR also delay in lodging the FIR more particularly a huge delay of more than 10 years requires to be considered in favour of the petitioner-accused.

6. Learned advocate for the petitioner further submits that FIR is malicious as well as vindictive in as much as the petitioner and no other persons arraigned as accused have been shown as the beneficiaries of the misappropriation. On the contrary, it has been categorically mentioned that while recording the statements of the labourers, all the labourers have admitted that the amount was deposited in their accounts, which was in turn withdrawn and utilized by them. Ultimately, it was submitted by learned advocate for the petitioner to allow present petition.

7. Having heard learned advocate for the petitioner and considering the averments made by the petitioner in the present petition, it appears that the allegation against the present petition is about not taking care by the petitioner while rendering his duty during such entire scam. While concluding the present petition, first of all we have to consider the provisions of law, which are as under:

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8. In the recent decision of the Hon'ble Supreme Court in case of Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and Ors., reported in 2021 (19) SCC 401, is required to be referred to. After taking into consideration the earlier decision on exercising the powers under Section 482 of the Code of Criminal Procedure including the decision of State of Haryana V. Bhanaj Lal, reported in

1992 Supp (1) SCC 335 . The Hon'ble Surpreme Court has observed in Para 37 and 80, which are as under:

"37. Then comes the celebrated decision of this Court in the case of Bhajan Lal (supra). In the said decision, this Court considered in detail the scope of the High Court powers under section 482 Cr.P.C. and/or Article 226 of the Constitution of India to quash the FIR and referred to several judicial precedents and held that the High Court should not embark upon an inquiry into the merits and demerits of the allegations and quash the proceedings without allowing the investigating agency to complete its task. At the same time, this Court identified the following cases in which FIR/complaint can be quashed:

"102.(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 first information report and other materials, if any, accompanying the FIR do not disclose a R/SCR.A/6590/2023 ORDER DATED: 13/06/2023 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 person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, 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."

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9. In view of the above finding given by the Apex Court in case of Neeharika Infrastructure Pvt. Ltd. (Supra), it transpires that the power of quashing of criminal proceedings should be exercised very sparingly and with circumspection and that too in rarest of the rare cases and it was not justified for the Court in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the inherent powers do not confer any arbitrary jurisdiction on the Court to act according to its whims and fancies.

"It is well settled that at the stage when the High Court considers a petition for quashing criminal proceedings under section 482 of the Cr.P.C, the allegations in the FIR must be read as they stand and it is only if on the face of the allegations that no cognizable offence, as alleged has been made out, that the Court may be justified in exercising its jurisdiction to quash."

10. In case of State of Punjab Vs. Davinder Pal Singh Bhullar and Anr. reported in (2011) 14 SCC 770, the Apex Court has determined thus:

"51. The inherent power of the Court under Section 482 of the CrPC is saved only where an order has been passed by the criminal Court which is required to be set aside to secure the ends of justice or where the proceeding pending before a Court, amounts to abuse of the process of Court. Therefore, such powers R/SCR.A/6590/2023 ORDER DATED: 13/06/2023 cannot be exercised by the High Court in relation to a matter pending before a criminal court or where a power is exercised by the Court under Cr.P.C. Inherent powers cannot be exercised assuming that the statute conferred an unfettered and arbitrary jurisdiction, nor can the High court act at its whim or caprice. The statutory power has to be exercised sparingly with circumspection and in the rarest of rare cases. (Vide Kurushetra University V. State of Haryana and State of W.B. Vs. Sujit Kumar Rana)"

11. In the case of Prashant Bharti v. State of NCT of Delhi reported in (2013) 9 SCC 293, it is held that in order to determine the veracity of a prayer for quashing the criminal proceedings raised by an accused under Section 482 of the CrPC, the following questions have to be analyzed by the High Court:

1. Whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?
2. Whether the material relied upon by the accused is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?
3. Whether the material relied upon by the accused, has not been refuted by the prosecution / complainant; and / or the material is R/SCR.A/6590/2023 ORDER DATED: 13/06/2023 such, that it cannot be justifiably refuted by the prosecution / complainant?
4. Whether proceeding with the trial would result in an abuse of process of the court and hence, would not serve the ends of justice?

If the answer to all the questions is in affirmative, the Court should quash the proceedings by exercising its power under Section 482 of CrPC. But, in the present case, while considering the role

attributed to the petitioner, this court deems it not fit to exercise its power under Section 482 of the CrPC because this petition has been filed before filing of the charge sheet and it is very early to decide such kind of quashing petition.

12. It appears from the evidence placed on record, the petitioner has produced the record relating to the respondent no.1 but at this stage, this court has not to evaluate the evidence produced before the court and accordingly, applying to the law laid down by the Hon'ble Supreme Court in case of Neeharika Infrastructure Pvt. Ltd. (Supra) to the facts of the case in hand, this Court is of the firm opinion that this is not a fit case to entertain present petition and to quash the criminal proceedings in exercising the powers under Section 482 of the Code of Criminal Procedure at the threshold. The submissions made on behalf of the petitioner that the petitioner is innocent R/SCR.A/6590/2023 ORDER DATED: 13/06/2023 and/or he has not committed any offence alleged is premature and too early to opine on the same without conducting full- fledged trial of the allegations made in the FIR.

13. For the reasons stated above, present petition fails and the same deserves to be dismissed and accordingly, it stands dismissed at the admission stage without issuing any notice to the otherside.

(SAMIR J. DAVE,J) K. S. DARJI