

2023 SCC OnLine Guj 2565

In the High Court of Gujarat at Ahmedabad
(BEFORE J.C. DOSHI, J.)

Girishbhai Ambalal Rathod

Versus

State of Gujarat and Others

R/Criminal Misc. Application No. 30834 of 2016

Decided on August 17, 2023

Advocates who appeared in this case:

Mr. Hriday Buch(2372) for the Applicant(s) No. 1

Ds. Aff. not Filed (R) for the Respondent(s) No. 2

Notice not Recd Back for the Respondent(s) No. 1, 2

Mr. Ronak Raval APP for the Respondent(s) No. 1

Rule Served by Ds for the Respondent(s) No. 2

The Judgment of the Court was delivered by

J.C. DOSHI, J.:— The present petition seeks quashment of the FIR being I CR No. 80 of 2016 registered with Dehgam Police Station for the offences punishable under Sections 409 and 114 of the IPC which came to be registered by the respondent No. 2 - org. complainant.

2. Briefly stated; the case of the petitioner is that the petitioner was serving as Deputy Manager (Accounts) in the State Bank of India, Dehgam Branch; while one Mr. Harishbhai Maganbhai Parmar who was shown accused No. 1 was serving Head Cash Officer in the said Branch and it is their joint responsibility to tally accounts (currency) in the Bank. That on 19/12/2006, a surprise checking was conducted by the Nodal Office, SBI, Ahmedabad and upon verification of the account, it was found that there is a deficit amount of Rs. 4,52,500/- which were in denomination of coins. It is further stated that petitioner and said Mr. Harishbhai holds the responsibility to keep all the currency notes in the currency chest. Since the deficit of Rs. 4,52,500/- has been recorded in the surprise visit; upon verification Bank Manager filed the FIR before Dehgam Police Station alleging aforesaid offence.

3. Heard learned Advocate Mr. Hriday Buch for the petitioner and learned APP Mr. Ronak Raval for respondent - State.

4. At the outset, it may be noted that the order dated 27/12/2016 passed by this Court indicates that Mr. Dipak Gaurishanker Joshi serving as Branch Manager with the SBI was personally present before the Court and learned APP was also heard while passing the said order.

5. Learned Advocate for the petitioner Mr. Buch would submit two

fold submissions. Firstly; that indisputably the amount of Rs. 4,52,500/- for which the alleged offence is registered, came back to the SBI and amount is deposited in the Bank. He would further submit that the alleged incident took place in the year 2006; but the FIR was lodged in the year 2016; almost after ten years. He would submit that on reading of the contents of the FIR, it appears that the delay in lodging the FIR is not properly explained. He would submit that on the contrary, as per order dated 27/12/2016 passed by this Court, this Court has inquired as to why the FIR is filed lately and the first informant gave reply that SBI had no intention to initiate any criminal proceedings, more particularly, having regard to the finding recorded in the departmental inquiry; but since the RBI directed the SBI to lodge the FIR, the Bank thought it fit to lodge the FIR after delayed period of ten years from the date of alleged incident. He would further submit that looking to such aspect, by no stretch of imagination, the offence of criminal breach of trust punishable under Section 409 of the IPC is made out.

6. Learned Advocate Mr. Buch would submit that the petitioner is retired person on being superannuated and is living his retirement life. It is also sought to be canvassed that the petitioner who is facing departmental proceeding on same set of evidence came to be exonerated from the charge of criminal breach of trust. Thus, in view of decision in case of *Videocon Industries Ltd. v. State of Maharashtra* [(2016) 12 SCC 315 : AIR 2016 SC 2843], more particularly, paragraph 18 thereof, he would submit that in case of exoneration on merits, independent proceeding where the allegations are unfounded on the set of evidence, the criminal prosecution on the same set of facts cannot be allowed to continue.

7. Mainly on above submissions, learned Advocate for the petitioner submits to allow the present petition as the petitioner got retired and has not misappropriated the money of the Bank; else it would seriously and adversely hamper the life of the petitioner.

8. In light of these submissions, learned Advocate Mr. Buch for the petitioner seeks adjudication of this petition in favour of the petitioner.

9. Vehemently, learned APP Mr. Ronak Raval for respondent-State would submit that at earlier point of time vide letter dated 20/04/2007 Vide O/W No. DEH/NISC-2007-2008-26, a written complaint was forwarded to the concerned Police Station; but the Police Station has not taken into consideration the said written complaint. He would further submit that looking to this aspect, it appears that the information was lodged as soon as incident took place; but the Police has not recorded the FIR and thus no fault of the SBI can be found in filing the complaint late.

10. Learned APP would further submit that in-fact reading of the outcome of the departmental inquiry would indicate that the

punishment has been imposed upon the petitioner in departmental proceeding in tune of reduction by one stage in the time scale of pay for one year, with the direction that the petitioner will not earn increments to pay during the period of such reduction and on expiry of such period the reduction will have the effect of postponing the future increments of his pay. Thus, the circumstances spell that even in the departmental inquiry, it was found that the petitioner has committed the mischief as alleged and it is therefore submitted that the FIR *prima facie* found to be true. He would submit that sufficient material is available to send the petitioner to trial. Thus, resultantly the petitioner has failed to make out any case for exercise of powers under Section 482 of the Code to quash the FIR. He would submit that the defence of the petitioner can be examined during course of trial; but under the jurisdiction of Section 482 of the Code, it is not possible to examine the complaint/FIR in juxta position of various probabilities raised by the petitioner. Upon such submissions, learned APP prays to dismiss the present petition.

11. At the outset, let refer to order dated 27/12/2016 passed by this Court.

"1. Shri. Dipak Gaurishanker Joshi serving as a 'Branch Manager' with the State Bank of India, Dehgam i.e. the respondent No. 2 is personally present in the Court. He informs the Court that in the departmental inquiry, which was initiated against the applicant herein, the applicant has been exonerated. He points out that the findings recorded by the Inquiry Officer are accepted by the Bank. The findings recorded by the Inquiry Officer are as under:

"In view of the above, I am inclined to consider the following points also while deciding upon the penalty to be imposed on Shri. G. A. Rathod, Officer MMGS-II.

- (i) It is nowhere mentioned in the charge sheet that fraud has been perpetrated by the Charge-sheeted Officer (CSO).*
- (ii) The procedural lapses are observed on the part of the Charge-sheeted officer.*
- (iii) The Charge-sheeted officer could not take complete charge of Rupee Coins/Small Coin balances while taking over permanent charge as Branch Accountant on 21.07.2006, due to improper storage of the coins bags in the strong room,*
- (iv) No monetary loss has occurred to the Bank as the entire amount of cash storage has been recovered equally from the Cash officer and the Charge-sheeted officer. The Charge-sheeted officer has accepted, in his submission dated 08/10/2008 on the IA's Report, the recovery of Rs. 2,26,250/- from his as penalty to him.*

(v) *As per the investigation report, Shri. H.M. Parmar, Deputy Manager (Cash) did not perform his duty as Cash Officer with due diligence and sincerely. Certain act on the part of Shri. Parmar mentioned under para 8 of the investigation officer which has resulted into this shortage of cash in the Currency Chest and Small Coins Depot balances.*

Keeping in mind the whole matter in totality, I am of the considered view that the ends of justice would be adequately meet by imposing the following penalty of Shri. G. A. Rathod.

"Reduction by one stage in the time scale of pay for one year, with further direction that the officer will not earn increments to pay during the period of such reduction and on expiry of such period the reduction will have the effect of postponing the future increments of his pay" in terms of Rule No 67(1) of State Bank of India Officers' Service Rules from the date of service of this order."

2. *In reply to the question put by the Court as to why it took ten years for the Bank to lodge the F.I.R. I am told that the Bank had no intention as such to initiate any criminal prosecution, more particularly, having regard to the findings recorded in the departmental inquiry. However, the Reserve Bank of India directed the Bank to lodge the F.I.R. In such circumstances, the Bank thought fit to lodge the F.I.R. after a period of ten years from the date of the alleged incident.*

3. *Let Rule be issued to the respondents, returnable on 21st April, 2017. Ms. Thakore, the learned Assistant Public Prosecutor waives service of notice of rule for and on behalf of the respondent No. 1. - the State of Gujarat. The respondent No. 2 be served directly through the Investigating Officer of the concerned Police Station. Direct Service is permitted.*

4. *Let there be an ad-interim order in terms of para 15(G)."*

12. The said order indicates that SBI was not inclined to file the FIR; but the FIR came to be lodged at the insistence of RBI after a period of 10 years from the date of alleged incident. It is undoubted that on the set of circumstance spelling in the FIR, on same set of circumstances, the departmental proceeding was initiated against the petitioner and in the said departmental proceeding as reproduced herein above, it clearly mentions that no monetary loss has occurred to the Bank as the entire amount of cash shortage has been recovered. It is further recorded that the petitioner could not take charge of Rupee Coins/small coin balances while taking over permanent charge as Branch Accountant on 21/07/2006 due to improper storage of the coins bags in the strong room. The above finding has been accepted by the SBI.

13. Now. insofar as reliance placed upon *Videocon Industries Ltd.*

(supra) is concerned, in paragraph 18 and 19, the Hon'ble Apex court has observed and held following:

"18. In the ultimate eventuate, the following principles were culled out from the decisions referred to in the judgment. The majority has put it thus:—

"The ratio which can be culled out from these decisions can broadly be stated as follows:

- (i) Adjudication proceedings and criminal prosecution can be launched simultaneously;*
- (ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;*
- (iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;*
- (iv) The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;*
- (v) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;*
- (vi) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and*
- (vii) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases".*

19. Clarifying the position, the majority observed that the yardstick would be to judge as to whether the allegation in the adjudication proceedings as well as the proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceedings is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings, the trial of the person concerned shall be an abuse of the process of the court. On the basis of the aforesaid principles, the majority proceeded to analyse the factual matrix and analysed the finding recorded by the adjudicating authority and opined when there is a finding by the Enforcement Directorate in the adjudication proceeding that there is no contravention of any of the

provisions of the Act, it would be unjust and an abuse of the process of the court to permit the Enforcement Directorate to continue with the criminal prosecution."

14. What perceives from the aforesaid ratio is that when the allegations founded in the departmental inquiry under criminal case are based on same set of circumstances if the allegations in departmental proceedings leads to exoneration, the criminal proceedings cannot be allowed to continue upon underlying principle that criminal proceeding requires higher standard of proof.

15. In the present case, in the departmental proceeding though punishment was imposed upon the petitioner, it favours the petitioner insofar as the allegations under Section 409 of the IPC is concerned.

16. At this juncture, let refer to Section 409 of the IPC.

"409. Criminal breach of trust by public servant, or by banker, merchant or agent.-Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with 1 [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

17. In order to prove the offence under Section 409 of the IPC, the prosecution is undoubted to prove that the accused, public servant or a banker or agent was entrusted with the property which he is duly bound to account for and that he committed criminal breach of trust [see : *Sadrhupati Nageswara Rao v. State of Andhra Pradesh* [(2012) 8 SCC 547].

18. The finding in the departmental proceeding indicates that the petitioner was not entrusted the property. Thus, the basic ingredients of offence punishable under Section 409 of the IPC is lacking. In addition thereof, there is ten years of yawning and unexplained gap for registration of the FIR.

19. No doubt, while exercising the powers under Section 482 of the Cr. P.C. the complaint/FIR has to be read as a whole. However, if reading of the FIR as a whole does not constitute the elements of alleged offence, the Court owes the duty to scuttle such vexatious proceedings. In the recent decision of the Hon'ble Apex Court in the case of *Mahmood Ali v. State of UP* rendered in Criminal Appeal No. 2341 OF 2023 (Arising out of S.L.P. (Criminal) No. 12459 of 2022) in paragraph 12 it has been held and observed as under:

"12. At this stage, we would like to observe something important Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure

(CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged."

20. In the result, the petition succeeds. FIR being I CR No. 80 of 2016 registered with Dehgam Police Station for the offences punishable under Sections 409 and 114 of the IPC and the further proceedings arising out thereof are quashed and set aside. Rule is made absolute to the aforesaid extent.

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