(2012) 07 SC CK 0067

Supreme Court of India

Case No: Criminal Appeal No. 1040 of 2012 (Arising out of SLP (Criminal) No. 8783 of 2011)

Jayrajsinh Digvijaysinh Rana		APPELLANT
	Vs	
State of Gujarat and Another		RESPONDENT

Date of Decision: July 20, 2012

Acts Referred:

- Constitution of India, 1950 - Article 136, 142
- Criminal Procedure Code, 1973 (CrPC) - Section 320, 482
- Penal Code, 1860 (IPC) - Section 120B, 420, 467, 468, 471

Citation: (2012) BomCR(Cri) 607 : (2012) CriLJ 3900 : (2012) 3 Crimes 167 : (2013) 1 GLR 65 : (2012) 3 JCC 1943 : (2012) 4 JLJR 78 : (2012) 6 JT 504 : (2012) 3 KLJ 287 : (2012) 4 PLJR 53 : (2012) 6 SCALE 525 : (2012) 12 SCC 401 : (2012) 2 UC 1596

Hon'ble Judges: Ranjan Gogoi, J; P. Sathasivam, J

Bench: Division Bench

Advocate: L. Nageshwar Rao, Pradhuman Gohil, Vikas Singh, Charu Mathur and S. Hari Haran, for the Appellant; S.B. Upadhyay, Pawan Kishor Singh, Sarvjit Pratap Singh, Himantika Wahi and Jesal, for the Respondent

Final Decision: Disposed Of

Judgement

P. Sathasivam, J.
Leave granted.

2. This appeal is filed against the impugned order dated 18.07.2011 passed by the High Court of Gujarat at Ahmedabad in Criminal Misc. Application No. 3999 of 2011 whereby the High Court dismissed the application filed by the Appellant herein (original Accused No. 3) u/s 482 of the Code of Criminal Procedure, 1973 (in short "the Code") to quash and set aside the impugned FIR No. 45 of 2011 dated 12.03.2011 lodged by Vipulbhai Harshadbhai Raja, Respondent No. 2 herein with Sanand Police Station, Ahmedabad for

the offences punishable Under Sections 467, 468, 471, 420 and 120-B of the Indian Penal Code, 1860 (in short "the Indian Penal Code").

3. Brief facts:

(i) Respondent No. 2 herein is the President of Shri Supan Plot Owners" Association situated at Village Nidhrad, Sanand, Ahmedabad. Certain plots of the said Association were disposed of illegally by creating false/forged documents by one Pravinbhai Gangashankar Raval (original Accused No. 1) in favour of one Janakben Pravinchandra Raval (original Accused No. 2) who, in turn, sold the same to one Jayrajsinh Digvijaysinh Rana, the Appellant herein (original Accused No. 3).

(ii) Pursuant to the same, Respondent No. 2 herein lodged FIR No. 45 of 2011 dated 12.03.2011 alleging about the sheer collusion of all the three above named accused persons in disposing of the plots.

(iii) Being aggrieved and dissatisfied with the same, the Appellant herein (Accused No. 3) preferred an application u/s 482 of the Code before the High Court to quash and set aside the said FIR. The High Court, by impugned order dated 18.07.2011, dismissed the same.

(iv) Challenging the said order of the High Court, the Appellant has filed the above appeal by way of special leave before this Court.

4. Heard Mr. L. Nageswara Rao, learned senior Counsel for the Appellant, Mrs. Hemantika Wahi, Learned Counsel for Respondent No. 1-State of Gujarat and Mr. S.B. Upadhyay, learned senior Counsel for Respondent No. 2 - the Complainant.

5. In view of the subsequent development, as narrated in the counter affidavit filed by Respondent No. 2 in this Court, there is no need to traverse all the factual details about the allegations and the ultimate order passed by the High Court dismissing the application filed by the Appellant herein u/s 482 of the Code. The following averments in the counter affidavit are relevant for disposal of the above appeal which reads as under:

5. That after the filing of the present special leave petition, the Petitioner to show his bona fides and to prove that he himself is a victim has approached the answering Respondent. The answering Respondent was informed by the Petitioner that the Petitioner himself got cheated by Pravinbhai Gangashanker Raval and Janakben Pravinchandra Raval (accused Nos. 1 & 2 in the instant case FIR No. 45/2011). The Petitioner further informed the answering Respondent that he shall not claim any right, title, interest over the various plots belonging to the association and accordingly he has no right or title over the same.

6. The Petitioner further submitted that he was also cheated by the other accused persons who sold the properties being subject the matter of dispute to whom on the basis of forged and fabricated documents, by which no rights can be transferred legally.

7. That the Petitioner further informed the answering Respondent that he has also filed a police complaint against the said accused Pravinbhai Gangashanker Raval and Janakben Pravinchandra Raval (accused Nos. 1 & 2 in the instant case FIR No. 45/2011) before the Special Investigation Team, Ahmedabad, Gujarat.

8. That the Petitioner further assured and has given an affidavit to the answering Respondent that he will withdraw the Civil Suit bearing No. 300/2011, titled as Jayarajsingh Digvijaysingh Rana v. Supan Plot Owners Association and Ors. filed before the City Civil Court, Ahmedabad for specific performance and declaration, accepting that the Petitioner did not have any legal right, possession, title or claim over the various plots in issue as they were sold to him by Pravinbhai Gangashanker Raval and Janakben Pravinchandra Raval (accused Nos. 1 & 2 in the instant case) on the basis of forged documents. He further accepted the answering Respondent to be the genuine owner of the plots in existence and with them.

9. That after considering the bona fide intention of the Petitioner the answering Respondent hereby has no objection if the present FIR No. 45/2011 is quashed qua the Petitioner. However, this requires to be clarified that the properties allegedly transferred in favour of the Petitioner shall be considered as the property of the Association and this transaction which had taken place between the accused persons is a null and void transaction through which no title, right and interest has ever been transferred and the possession of the property was and is with the Association.

10. That in view of the above and since the right, title and interest of the association is now protected as the documents showing transfer of the property in favour of the Petitioner stand declared as incompetent documents, therefore, the answering Respondent has no objection if the present SLP is allowed and the FIR in question is quashed qua the Petitioner.

The above information in the form of counter affidavit filed by Respondent No. 2 herein before this Court shows that by bona fide efforts, the Appellant, who himself being the victim at the hands of Accused Nos. 1 and 2, assured Respondent No. 2 that he will not claim any right, title and interest over various plots belonging to the Association. It is further seen that the Appellant has also executed an affidavit to Respondent No. 2 stating that he will withdraw the Civil Suit bearing No. 300/2011 filed before the City Civil Court, Ahmedabad for specific performance and declaration, accepting that he did not have any legal right, possession, title or claim over the various plots in issue as they were sold to him by Accused Nos. 1 and 2 on the basis of forged documents. Respondent No. 2, after satisfying the bona fide intention of the Appellant, informed this Court, by way of counter affidavit, that he has no objection if the present FIR No. 45/2011 is quashed qua the Appellant. Respondent No. 2, in categorical terms, informed this Court that in view of the stand taken by the Appellant and since the right, title and interest of the said plots of the Association is now protected as the documents showing transfer of the property in favour of the Appellant stand declared as invalid documents, he has no objection if the present

appeal is allowed and the FIR in question is quashed insofar as the Appellant is concerned. Apart from the above stand of Respondent No. 2 in the form of counter affidavit, learned senior Counsel appearing for him also reiterated the same.

6. It is also relevant to point out that the averments in the FIR disclosed the offences punishable Under Sections 467, 468, 471, 420 and 120B of Indian Penal Code.

7. The only question for consideration before this Court at this stage is that inasmuch as all those offences are not compoundable offences u/s 320 of the Code (except Section 420 of Indian Penal Code that too with the permission of the Court before which any prosecution for such offence is pending), whether it would be possible to quash the FIR by the High Court u/s 482 of the Code or by this Court exercising jurisdiction under Article 136 of the Constitution of India?

8. The above question was recently considered by this Court in Shiji @ Pappu and Ors. v. Radhika and Anr. (2011) 10 SCC 705. The question posed in that case was "Whether the criminal proceedings in question could be quashed in the facts and circumstances of the case having regard to the settlement that the parties had arrived at." After adverting to Section 482 of the Code and various decisions, this Court concluded as under:

17. It is manifest that simply because an offence is not compoundable u/s 320 Code of Criminal Procedure is by itself no reason for the High Court to refuse exercise of its power u/s 482 Code of Criminal Procedure. That power can in our opinion be exercised in cases where there is no chance of recording a conviction against the accused and the entire exercise of a trial is destined to be an exercise in futility. There is a subtle distinction between compounding of offences by the parties before the trial court or in appeal on the one hand and the exercise of power by the High Court to quash the prosecution u/s 482 Code of Criminal Procedure on the other. While a court trying an accused or hearing an appeal against conviction, may not be competent to permit compounding of an offence based on a settlement arrived at between the parties in cases where the offences are not compoundable u/s 320, the High Court may quash the prosecution even in cases where the offences with which the accused stand charged are non-compoundable. The inherent powers of the High Court u/s 482 Code of Criminal Procedure are not for that purpose controlled by Section 320 Code of Criminal Procedure.

18. Having said so, we must hasten to add that the plenitude of the power u/s 482 Code of Criminal Procedure by itself, makes it obligatory for the High Court to exercise the same with utmost care and caution. The width and the nature of the power itself demands that its exercise is sparing and only in cases where the High Court is, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of the process of law. It is neither necessary nor proper for us to enumerate the situations in which the exercise of power u/s 482 may be justified. All that we need to say is that the exercise of power must be for securing the ends of justice and only in cases where refusal to exercise that power may result in the abuse of the process of law. The

High Court may be justified in declining interference if it is called upon to appreciate evidence for it cannot assume the role of an appellate court while dealing with a petition u/s 482 of the Code of Criminal Procedure. Subject to the above, the High Court will have to consider the facts and circumstances of each case to determine whether it is a fit case in which the inherent powers may be invoked.

9. On going through the factual details, earlier decision, various offences u/s 320 of the Code and invocation of Section 482 of the Code, we fully concur with the said conclusion. In the case on hand, irrespective of the earlier dispute between Respondent No. 2-the complainant and the Appellant being Accused No. 3 as well as Accused Nos. 1 and 2 subsequently and after getting all the materials, relevant details etc., the present Appellant (Accused No. 3) sworn an affidavit with bona fide intention securing the right, title and interest in favour of Respondent No. 2 herein-the Complainant. In such bona fide circumstances, the power u/s 482 may be exercised. Further, in view of the settlement arrived at between Respondent No. 2-the complainant and the Appellant (Accused No. 3), there is no chance of recording a conviction insofar as the present Appellant is concerned and the entire exercise of trial is destined to be an exercise in futility. Inasmuch as the matter has not reached the stage of trial, we are of the view that the High Court, by exercising the inherent power u/s 482 of the Code even in offences which are not compoundable u/s 320, may quash the prosecution. However, as observed in Shiji (supra), the power u/s 482 has to be exercised sparingly and only in cases where the High Court is, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of the process of law. In other words, the exercise of power must be for securing the ends of justice and only in cases where refusal to exercise that power may result in the abuse of the process of law.

10. In the light of the principles mentioned above, inasmuch as Respondent No. 2-the Complainant has filed an affidavit highlighting the stand taken by the Appellant (Accused No. 3) during the pendency of the appeal before this Court and the terms of settlement as stated in the said affidavit, by applying the same analogy and in order to do complete justice under Article 142 of the Constitution, we accept the terms of settlement insofar as the Appellant herein (Accused No. 3) is concerned.

11. In view of the same, we quash and set aside the impugned FIR No. 45/2011 registered with Sanand Police Station, Ahmedabad for offences punishable Under Sections 467, 468, 471, 420 and 120-B of Indian Penal Code insofar as the Appellant (Accused No. 3) is concerned. The appeal is allowed to the extent mentioned above.