

HIGH COURT OF GUJARAT

MAHENDRABHAI POPATLAL MEHTA

Versus

STATE OF GUJARAT AND ORS

Date of Decision: 01 May 2012

Citation: 2012 LawSuit(Guj) 469

Hon'ble Judges: [H N Devani](#)

Case Type: Criminal Miscellaneous Application

Case No: 71 of 2011

Subject: Constitution, Criminal

Acts Referred:

[Constitution Of India Art 20, Art 20\(2\).](#)

[Indian Penal Code, 1860 Sec 420, Sec 114, Sec 468, Sec 465, Sec 471, Sec 467, Sec 120B](#)

[Code Of Criminal Procedure, 1973 Sec 482](#)

Final Decision: Application allowed

Advocates: [Krina Calla](#), [R C Jani](#), [S V Raju Associates](#)

Cases Referred in (+): 1

Harsha Devani, J.

[1] By this application under section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code"), the applicant seeks quashing of the first information report registered vide Kalol Taluka Police Station I C. R. No.208 of 2010.

[2] One Vardhman Kantilal Shah, father of the second respondent lodged the above referred first information report against the applicant herein and one Kalaji Dhulaji Thakor, alleging commission of the offences punishable under sections 465, 467, 471 and 120-B of the Indian Penal Code. It was the case of the first informant that two months prior to the date of lodging of the first information report, he had obtained copies of the 7/12 and 8-A extracts of the lands bearing Khata No.14, which included land bearing survey No.753 and 59, approximately admeasuring fifteen vighas

whereupon, he had found that the accused had fabricated and forged a power of attorney in favour of Kalaji Dhulaji Thakor and Kalaji Rupaji Thakor by putting his false signature and had executed a sale deed in favour of the applicant herein. It was further alleged that upon coming to know of the mutation entry whereby the name of the applicant herein was entered in the revenue record, he had gone to the office of the Registrar at Kalol and was informed that the name of Mahendrabhai Popatbhai Mehta, viz., the applicant herein, had been introduced in the record on the basis of the sale deed which had been executed in his favour on the basis of a power of attorney held by Kalaji Dhulaji Thakor and Kalaji Rupaji Thakor. That he had obtained a copy of the alleged power of attorney from the office of the Registrar, which power of attorney had been executed on 17.1.1994 and upon inquiring from the persons in whose favour the power of attorney was executed, it was revealed that Kalaji Dhulaji Thakor had expired two years ago whereas Kalaji Rupaji Thakor was alive and had told him that neither had he obtained any power of attorney nor had he executed any sale deed in favour of the applicant. It was further stated that with a view to ascertain as to whether the signatures on the power of attorney were genuine, he had obtained the opinion of a Government recognized fingerprint expert who had given his report dated 22.6.2009 wherein it was stated that the signature of the first informant on the power of attorney was forged. It was, accordingly, alleged that the applicant herein and Kalaji Dhulaji Thakor had hatched a conspiracy whereby a power of attorney had been executed in respect of the lands of his ownership bearing survey No.753 and 59 forming part of Khata No.14, and on the basis of the said forged power of attorney a deed had been executed and the name of the accused had been introduced in the revenue record. These, in sum and substance, are the allegations made in the first information report.

[3] Mr. Chetan Pandya, learned advocate for the applicant drew the attention of the court to the fact that the name of the applicant herein had been introduced in the revenue record way back on 29.4.1995 and that the mutation entry had been made after service of notice to the owners of the said land, to submit that in the year 1995 itself, the first informant was aware of the execution of the sale deed in favour of the applicant herein. Inviting attention to the plaint of Special Civil Suit No.62 of 1996 and Special Civil Suit No.63 of 1996, it was pointed out that at the relevant time, the first informant and his brother had instituted the said suits seeking cancellation of the sale deeds executed in favour of the applicant herein. Attention was also invited to the complaint lodged by Ashik Vimalbhai Shah, a nephew of the first informant, being Criminal Case No.820 of 1996, as well as Criminal Case No.821 of 1996 lodged by the first informant against the applicant herein and others in connection with the execution of the sale deed in question, alleging commission of the offences punishable under sections 467, 468, 471, 420, 114 IPC. It was submitted that, thus, it apparent that in the year 1996 itself, the first informant was aware of the execution of the sale deed in

question on the basis of the aforesaid power of attorney and that in respect thereof, the first informant had instituted civil suits and had also lodged a criminal complaint. It was submitted that the criminal complaint in question as well as civil suits came to be dismissed for want of prosecution. Attention was invited to the order passed by the learned Magistrate on the complaint lodged by the first informant, to submit that the learned Magistrate has observed that the complainant was consistently remaining absent and has dismissed the complaint and has acquitted the present applicant and other accused of the offences alleged. It was submitted that subsequently after a considerable time, now in the year 2010, the present first information report has been lodged in respect of the very same offence in the context of which the earlier complaint had been lodged. Under the circumstances, the lodging of the present first information report amounts to prosecuting the applicant once again for the same offence. Inviting attention to the contents of the first information report, it was pointed out that it has been stated therein that the first informant came to know of the commission of the offence for the first time about two months prior to the lodging of the first information report at the time when he applied for copies of extracts of the 7/12 and 8A records in respect of the lands in question. It was, accordingly, submitted that the averments made in the first information report are false on the face of it inasmuch as, the first informant had lodged the complaint in respect of the very same offence earlier in the year 1996 and had also instituted civil proceedings in connection with the sale deed in question. It was argued that the institution of the civil proceedings as well as lodging of the earlier complaint have been suppressed in the first information report and for the second time, the applicant is sought to be prosecuted in respect of the very same offence. Under the circumstances, the lodging of the first information report in question is clearly an abuse of the process of law and is vexatious and false inasmuch as, a false prosecution has been instituted by suppressing the relevant facts. It was submitted that under the circumstances, this is a fit case for invocation of inherent powers under section 482 of the Code for quashing the first information report.

[4] Mr. R. C. Jani, learned advocate appearing on behalf of the second respondent invited attention to the averments made in the affidavit in reply filed by the second respondent as well as the opinion of the handwriting expert, to submit that from the said opinion it is apparent that the signature of the first informant on the power of attorney is forged. It was submitted that Kalaji Rupaji Thakor, one of the executants of the forged power of attorney has also stated that he has not executed any power of attorney in favour of the applicant. Under the circumstances, it is apparent that the sale deed executed in favour of the applicant is based on the forged and fabricated power of attorney. Therefore, when an offence as alleged is clearly made out, there is no warrant for intervention by this court in exercise of powers under section 482 of the Code.

[5] On a perusal of the allegations made in the first information report, it is apparent that the same relate to the execution of a sale deed in favour of the applicant herein on the basis of a power of attorney dated 17.1.1994. In respect of the alleged offence of execution of the sale deed on the basis of the alleged forged and fabricated power of attorney, the first informant had earlier lodged a complaint being Criminal Case No.821 of 1996 which culminated into an order dated 6.7.1999 whereby, the complaint came to be filed. Another complaint lodged by the nephew of the first informant in respect of survey No.59 culminated into an order passed by the learned Magistrate whereby, the applicant herein came to be acquitted of the offences alleged.

[6] A bare reading of the first information report reveals that according to the first informant, he came to know of the execution of the sale deed in favour of the applicant herein two months prior to the lodging of the first information report, when he obtained copies of the extracts of village form No. 7/12 and 8-A in respect of the lands in question. At this stage, it may be pertinent to refer to the averments made in the affidavit in reply filed on behalf of the second respondent and more particularly to the contents of paragraph 8 thereof, wherein the deponent has stated that as regards the civil and criminal cases which have been mentioned by the applicant, the same were dismissed, but the annexures which are annexed to the application at pages 53, 63, 69 and 92 suggest that there was no dismissal of the proceedings, but because the complainant had not remained present, order was passed for non-prosecution which does not mean that the applicant has not committed an offence. It is further stated therein that the Village Vayna is having a major community of Thakors and the complainant is belonging to Baniya community having only house in the said village and therefore, naturally, having fear, the said prosecution was not proceeded further though the offence was declared in 1996. Thus, by virtue of the aforesaid averments made in the affidavit-in-reply of the second respondent the contents of the first information report stand falsified inasmuch as it is the case of the first informant in the first information report that he came to know of the execution of the sale deed only two months prior to the lodging of the first information report, whereas in the affidavit in reply it has been admitted that the offence was committed in the year 1996 and could not be proceeded further for the reasons stated therein. Thus, it is apparent that the first informant is not beyond making false allegations in the first information report, merely with a view to make out an offence against the applicant herein.

[7] As noted hereinabove, in respect of the same offence, namely, execution of the sale deed on the basis of the alleged fabricated power of attorney, separate complaints had been lodged by the first informant as well as by his brother's son in respect of the survey No.753 and 59, respectively. Both the complaints were not prosecuted further and ended in acquittals. At this juncture it may be germane to refer to the provisions

of Article 20 of the Constitution of India. Clause (2) of Article 20 provides that no person shall be prosecuted and punished for the same offence more than once. In the facts of the present case, it is apparent that in respect of the very same offence, the applicant herein had been prosecuted earlier, however, the said prosecution ended in an acquittal. Under the circumstances, it is not permissible for the first informant to lodge a prosecution in respect of the same offence once again as the same would be directly hit by clause (2) of Article 20 of the Constitution of India.

[8] In the opinion of this court, the present case would also fall within illustration (7) enumerated by the Supreme Court in [State of Haryana v. Bhajan Lal](#), 1992 Supp1 SCC 335, as regards the categories of cases in which the High Court may exercise powers under Article 226 of the Constitution or section 482 of the Code for quashing a prosecution, viz., "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." Moreover, this being a second prosecution instituted in respect of the same offence, the same stands vitiated, even otherwise. Under the circumstances, this is a fit case for exercise of powers under section 482 of the Code to prevent abuse of the process of law.

[9] For the foregoing reasons, the application succeeds and is, accordingly, allowed. The first information report registered vide Kalol Taluka Police Station I C. R. No.208 of 2010 is hereby quashed and set aside. Rule is made absolute accordingly.