

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CRIMINAL APPLICATION NO. 1253 of 2022

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KESHAVBHAI MOHANBHAI BHUT
Versus
RANABHAI KALABHAI SENTA

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Appearance:

MR. KANJIBHAI M BHUT(6246) for the Applicant(s) No. 1
MR.DEVENDRA H PANDYA(6462) for the Applicant(s) No. 1
for the Respondent(s) No. 1,2
MR CHINTAN DAVE, for respondent(s) No.

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CORAM:HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

Date : 25/02/2022

ORAL ORDER

1. This petition is filed under Article 227 of the Constitution of India in which the petitioner has prayed that the order dated 24.08.2021 passed by learned Additional Sessions Judge, Bhavnagar @ Mahuva in Criminal Revision Application No.28 of 2016 be quashed and set aside.

2. Heard learned advocate Mr. K. M. Bhut for the petitioner and learned APP for the respondent - State.

3. Learned advocate for the petitioner and learned APP for the respondent - State.

4. Learned advocate for the petitioner submitted that the petitioner filed a private compliant before the concerned Magistrate Court i.e. Criminal Case

No.21 of 2004 against the concerned accused persons for the alleged offence punishable under Sections 426, 427, 341 and 114 of the Indian Penal Code. It is submitted that initially the concerned Magistrate Court passed an order under Section 210 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') and report of the concerned police officer was called for. After perusing the report of the concerned officer, the concerned Magistrate Court followed the procedure under Section 202 of the Code. The deposition of the present applicant was recorded at Exh.14. After perusing the material placed on record, the concerned Magistrate Court dismissed the complaint under Section 203 of the Code vide order dated 16.07.2016. It is submitted that thereafter petitioner filed Criminal Revision Application No.28 of 2016 before the Sessions Court and Sessions Court, vide impugned order dated 24.08.2021, dismissed the said revision application and therefore the petition has preferred this petition under Article 227 of the Constitution of India.

5. Learned advocate for the petitioner has assailed the impugned order mainly on the ground that the concerned Magistrate Court has not followed the procedure prescribed under the Code before dismissing the complaint under Section 203 of the Code. It is further submitted that the Sessions Court has also not properly appreciated the relevant aspects. Learned advocate, thereafter, referred to the averments and allegations made against the concerned

accused person in the complaint filed by the present petitioner. After referring to the said allegations, it is submitted that, *prima facie*, the ingredients of the alleged offence are made out and therefore the concerned trial Court has committed an error while dismissing the complaint on the ground that dispute between the parties is of civil nature. Learned advocate, therefore, urged that both the impugned orders passed by the Courts below be quashed and set aside.

6. On the other hand, learned APP has opposed this petition and referred the impugned order passed by the concerned Magistrate Court, copy of which is placed on record at page 24-A of the compilation. Learned APP has thereafter referred the deposition of the petitioner, which was recorded by the concerned Magistrate Court while conducting inquiry under Section 202 of the Code. Learned APP, thereafter, referred the observations made by the concerned Sessions Court while rejecting the revision application. Learned APP after referring the aforesaid documents, contended that no error is committed by the concerned Sessions Court while rejecting the revision application and therefore this petition may not be entertained.

7. Having heard the learned advocates appearing for the parties and having gone through the material placed on record, it would emerge that the petitioner filed private complaint under Sections 426, 427, 341

and 114 of IPC before the concerned Magistrate Court. Thereafter, the concerned Magistrate passed an order under Section 210 of the Code and asked the concerned police authority to submit a report. After perusing the report, the concerned Magistrate thought it fit to follow the procedure prescribed under Section 202 of the Code. During the course of inquiry conducted under Section 202 of the Code, the deposition of the present petitioner - original complainant was recorded vide Exh.14, copy of which is placed on record at page 21A of the compilation. The concerned Magistrate, thereafter, on the basis of the material available on the record with him, specifically gave the finding that the dispute between the complainant - present petitioner and the original accused is of civil nature and therefore on that ground the complaint filed by the petitioner came to be dismissed under Section 203 of the Code. Petitioner, thereafter, preferred revision application under Section 397 of the Code before the concerned Sessions Court. The said revision application is also dismissed. From the record, it appears that a Regular Civil Suit No.107 of 2004 is pending between the parties for the same issue before the concerned Civil Court at Mahuva. The said aspect is reflected from the impugned order passed by the concerned Sessions Court. The concerned opponent of the Revision Application produced a copy of the said civil suit vide Mark 18/1 before the concerned Sessions Court and after verifying the record, the Sessions Court has specifically observed that the civil suit is also

pending between the parties for the same reason and therefore revision application filed by the present petitioner was not entertained.

8. This Court has considered the reasoning recorded by the Sessions Court and this Court is of the view that no error is committed by the Sessions Court while rejecting the revision application filed by the petitioner. Hence, no interference is required in the present petition, which is filed under Article 227 of the Constitution of India. Accordingly, petition is dismissed.

LAVKUMAR J JANI

(VIPUL M. PANCHOLI, J)

