

GUJARAT HIGH COURT

Hon'ble Judges:R.D.Kothari, J.

Manubhai Murjibhai Varsani,Thro'poa Rupesh Jayantibhai Patel Versus State Of Gujarat

Criminal Miscellaneous Application No. 10959 of 2007 ;
Criminal Miscellaneous Application No. 9509 of 2009 ;
Criminal Miscellaneous Application No. 10244 of 2009 ;
Criminal Miscellaneous Application No. 2689 of 2007 ; *J.Date :- JULY 21, 2014

- [CODE OF CRIMINAL PROCEDURE, 1973](#) Section - [482](#)
- [INDIAN PENAL CODE, 1860](#) Section - [4](#), [4\(1\)](#), [415](#), [420](#), [424](#), [405](#), [409](#), [120B](#), [411](#), [467](#), [468](#), [471](#)
- [INFORMATION TECHNOLOGY ACT, 2000](#) Section - [43](#), [72](#)

Code of Criminal Procedure, 1973 - S. 482 - Indian Penal Code, 1860 - S. 4, 4(1), 415, 420, 424, 405, 409 r.w.s. 120B, 411, 420, 467, 468, 471 - Information Technology Act, 2000 - S. 43, 72 - offence of theft and forgery - quashing of complaint - complainant alleged that accused committed theft of doors, letter-heads of complainant company and misused the same - plea to quash complaint - complaint as to theft of doors lodged in U.K. - applicant is a citizen of U.K. - held, no complaint against citizen of U.K. maintainable in India - complaints quashed - petition allowed.

Imp.Para: [[14](#)] [[15](#)] [[16](#)]

Cases Referred to :

1. State Of A.P. V/s. Arva Palli, AIR 2009 SC 1963

Equivalent Citation(s):

2015 (1) GLR 530 : 2014 (3) GCD 2318

JUDGMENT :-

1 This group of four petitions arising out of three complaints filed by the complainant. These three complaints are filed by the Director of the company i.e. I-serve Systems Pvt. Ltd. The applicant in this group of petitions prays to quash these complaints.

2 Since the parties are almost similar, all these four petitions were taken up for hearing together and decided by this common judgment. Learned advocates for the parties have made submissions on these four petitions.

3 Few relevant facts are, thus; Complainant s company said to have engaged in business of building construction and manufacturing high security doors. The Company is in U.K. Say of the complainant in each of the three complaints may be briefly referred. In complaint

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registered as I-C.R.No.222 of 2007 at Satellite Police Station, Ahmedabad, complainant alleges that accused No.1 i.e. Manubhai Varsani was formerly working in the complainant's company as Commercial Director. That he has resigned w.e.f. 30.6.2006. The complainant's company had received the order from one Eugena Ltd. for manufacturing 35 doors. It is the say of the complainant that while fulfilling the said order, accused No.1 has got prepared 7 additional doors in the name of Eugena Ltd. At the time of making payment, it came to the notice of the company that Eugena Ltd. has not given order for 7 additional doors. Then, on 5.2.2007, complainant received one e-mail from accused No.1. The said e-mail along with photographs sent by accused No.1 about his new office opened at Sarkhej-Gandhinagar Highway, Opp. Iscon Mall, Baleswar Square. It was in the name of M.S.Business Center. It is the say of the complainant that seeing the photograph in e-mail sent by the accused No.1, it came to the notice of the complainant that doors shown in that office are the doors of the complainant's company. Hence, this complaint of theft. Second complaint is filed against two accused, who were formerly associated with the complainant's company wherein, accused No.2 is Manubhai Varsani, who is also accused in the above-referred complaint. Therein, in substance, the allegations are of theft of data by the accused. It is alleged that one agreement of 2,73,000 was entered into with M/s.Silchester Estate Contract. That data relating to said company was stolen by the accused and that is how it was removed from computer system of the complainant's company. It is the say of the complainant that thereby, the accused have caused great economic loss to the complainant's company. The said complaint is for offence under Section 415, 420, 424, 405, 409 r/w Section 120-B of IPC. The 3rd complaint is filed on 28.5.2009. It is filed against Manubhai Varsani, who is common accused in all the three complaints. In short, it is the say of the complainant that accused has committed theft of letterhead of the complainant's company and thereafter, has committed forgery by writing a letter in the name of the complainant. The said complaint is filed for offence under Sections 379, 420, 467, 468 and 471 of IPC.

4 Heard learned advocates appearing on behalf of the respective parties.

5 Learned advocate Mr.J.M.Panchal for the applicant, after briefly referring the facts of the case, has submitted that complaint about theft of doors has no substance. It was submitted that as per the say of the complainant himself, theft has taken place at U.K. It is also submitted that for the alleged theft taken place at U.K., complaint cannot be lodged in India. Further, it was submitted that considering the allegation made by the complainant - before the accused can be held liable for the theft, complainant has to prima facie show the occurrence of theft. In the present case, say of theft even prima facie not believable. Further, it was pointed out that company has also filed complaint in this regard in U.K. There is a reference to this effect in complaint itself. That being so, for the same offence, complainant cannot pursue remedy at U.K. and in India. Learned advocate has invoked the principle of double jeopardy.

5.1 Learned advocate Mr.Kanani, defending the accused in the complaint of theft and forgery, has pointed out that in the circumstances of the case, say of the complainant is exaggeration and not believable. It was submitted that accused Manubhai Varsani was the Director of the company during 2000-2006. The letter in question was written in pursuance to pending litigation of the complainant's company with another company. The settlement talk with another company in that litigation had taken place through Manubhai Varsani. In fact, matters were settled between the parties and the complainant's company has received substantial amount means if the amount is converted in rupee, the complainant has received about Rs.86 lacs because of the

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settlement. Certain agreed percentage were required to be paid to Manubhai Varsani pinches the complainant s company and therefore, the complainant has come forward with the present case. It was also submitted by Mr.Kanani that complainant s company is in habit of victimizing the person connecting with the said company. It was submitted that assertion in this regard is made by the applicant in the petition and applicant has also given instance in this regard.

6 As to the 3rd complaint, learned advocates for the parties have drawn attention to judgment of the Chancery Division of the U.K.Court in Case No.HC06C03745. This is judgment in civil litigation. Attention was drawn to Para.6 and 12 in the said judgment. It was submitted that civil court has found Manubhai Varsani as truthful witness. Further, say of the complainant as to the playing mischief with the data relating to M/s.Silchester Estate Contract ought not be believed in view of clear finding recorded by the U.K. Court in civil proceedings.

7 Attention was also drawn to judgment of this Court in CR.MA No.10291 of 2006, wherein this Court, after hearing the learned advocates for the parties, was pleased to quash the complaint i.e. I-C.R.No.54 of 2004. It was for offence of cheating and forgery etc.

8 Learned Senior Advocate Mr.K.S.Nanavati appearing in all the cases for the original complainant has emphasized on limited powers of this Court while considering the case under Section 482 of Cr.P.C. Referring the facts of all the cases, it was submitted that assertion made by the complainant in complaint is clear and specific. The question sought to be raised by the applicant cannot be properly considered at this stage in these proceedings. It was submitted that matter requires investigation. Shri Nanavati also placed reliance on Section 411 of IPC. It was submitted that mere mentioning of incorrect provision in complaint does not affect the case and offence does not ceases to be an offence only by that. In the opinion of learned advocate, prima facie offence under Section 411 can be said to have taken place. As to the complaint of theft and forgery, it was submitted that allegations made by the complainant deserve investigation, but apart from that prima faice, at this stage also, the complainant has brought on record sufficient material in support of his assertion. It is the say of the complainant that accused Manubhai Versani has signed the letter in the name of complainant. The complainant has obtained opinion of hand-writing expert. In his detailed report, the hand-writing expert has compared the specimen signature along with the admitted signature of the accused Manubhai Versani. The conclusion drawn by the hand-writing expert is in favour of the complainant. Further, it was pointed out that in the facts of the case, taking say of the applicant to be true i.e. the applicant had entered into negotiation and talk of settlement with the another company, even then considering the date of letter in question, it was not necessary for the applicant to address or write the letter in question. Thus, considering the seriousness of allegation, this Court should not interfere at this stage.

9 Then, referring the 3rd complaint, attention was drawn to Para.7, 8 and 9 of the complaint. It was submitted that specific allegation about theft of data is made by the complainant. It cannot be said that allegations made by the complainant are so frivolous or baseless that it does not require investigation. Reference and reliance placed on judgment delivered by the U.K.Court in civil litigation is misplaced. It was submitted that observation on which reliance was sought to be placed refers destruction of the document, while the say of the complainant is about theft and stolen of the data. Further, it was submitted that in the elaborate judgment, the U.K.Court in civil litigation had passed the order calling upon Manubhai Varsani to pay the compensation to the complainant s company. Learned advocate has also drawn attention

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to a decision of the Supreme Court in case of State of A.P. v. Arva Palli, reported in AIR 2009 SC 1963, in support of his submission about scope and power of the Court under Section 482 of the Cr.P.C.

10 Now, I may consider the case of the parties.

11 As to the complaint of theft and forgery against the accused Manubhai Varsani, basis of complaint is letter dated 14.7.2006. It is at Annexure-D. To appreciate the say of the complainant, said letter is produced hereinbelow :

"Dear Manu Re : Agreement with JCJ Locums to be sign and outstanding payment On the basis of authority given to me wide board resolution dated 30th June 2006 and reference to your letter dated 29th June 2006 and subsequent amended version dated 30th June 2009 I hereby confirming the following authority and terms on behalf of the company. On behalf of the company you are authorized to sign settlement agreement with JCJ Locums Ltd and others for various cases filed by our company against them. I confirm that on receipt of money from JCJ Locums Ltd & others in to our bank account in UK sum equivalent to 50% of the total agreed settlement sum 100,000 together with all accrued interest in Escrow Account and after deducting 50% of the reasonable legal cost if any after 30th June 2006 will be due and payable to you immediately. As per your conversation with Mr Naran pindoria and his confirmation to me that your outstanding loan account balance in company s books as on 30th June 2006 will be paid infull by Aug 2006 as agreed. Your Faithfully I-Serve System Pvt. Ltd. Direcor Sunil Pindoria"

12 The report of hand-writing expert is at Annexure-X. The opinion of hand-writing expert runs into 6 pages. The conclusion are at Page-95 and 96 which reads as under :

"The person who wrote the blue encircled specimen and "natural signatures marked S1, S2 and N1 to N8 did not write the red encircled English written disputed signature of the name "Sunil V. Pindoria" marked by me as Q1 in letter dated 14th July,2006. This red encircled disputed signature marked Q1 is found forged and not the genuine."

13 Say of the applicant that around this time, the applicant has undertaken talk of settlement with another company in pending litigation and in fact, those litigations were settled between the parties and the complainant s company had received substantial amount i.e. about Rs.86 lacs from the other companies. That in pursuance to the said efforts made by the applicant, complainant company was required to pay agreed amount to the applicant. That to avoid to pay the said amount, present complaint is got up. Relevant material referred to in support of this assertion, viz., settlement arrived at between the parties in litigation pending between the complainant s company with another company was referred to at the time of hearing, it does support the say of the applicant. On behalf of the respondent, in support of the submission that letter dated 14.7.2006 is forged one, emphasis was placed on a paragraph in the said letter wherein, it is stated that on arriving at a settlement, 50% of the agreed settlement sum to be paid to the applicant. It was submitted on behalf of the complainant that such assertion as to the payment to the applicant is sufficiently suggestive of forgery by the applicant.

13.1 First, reference may be made to the opinion of the handwriting expert. It would not be proper to give undue importance to this report. It is true that expert has

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concluded that disputed signature does not tally with the admitted signature. But it may be bear in mind that alleged forged letter is in the name of the complainant. In other words, it is the say of the complainant that some one on his behalf and to be precise, the applicant has written the said letter in the name of the complainant. Thus, the said letter bears the signature of the complainant. Obtaining opinion of handwriting expert in respect of one s own signature does not help much. It may also be bear in mind that document in question is just a letter and not a cheque. Therefore, some difference in the signature from letter to letter is natural. Such self-serving material does not carry the case of the complainant much further.

13.2 Now, about the letter dated 14.7.2006. It was rightly pointed out that applicant had resigned from the company w.e.f. 30.6.2006. There is no dispute between the parties on this. During the tenure of the applicant as a Director of the complainant s company, as referred above, talks of settlement was going on qua pending litigation between the complainant s company with other companies. Much efforts were made in this regard by the applicant, however, till the applicant resigns, those matters were not settled. Those matters came to be settled after 30.6.2006. Since the applicant, by that time, has resigned and since the applicant was in know of the matter and has taken much labour in that regard, by the letter in question the complainant had authorized the applicant to sign the agreement that may be arrived at between the parties. There is a considerable force in the submission that by the said letter i.e. letter dated 14.7.2006, applicant was empowered to sign the agreement. It was submitted that there is no other letter etc. authorizing the applicant to sign the agreement. Copy of the agreement is on record. Agreement is dated 18.7.2006.

13.3 As to the paragraph in the letter wherein reference is made to make the payment to the applicant, it may be bear in mind that there is no allegation of the complainant about misuse or deriving of benefit by the applicant pursuant to the letter in question. The present complaint is filed after about three years. This is material and important circumstance when there are no allegations or nothing to suggest that applicant had derived any benefit by alleging in the letter in question, writing per se does not cause injury to the complainant. Say of the applicant, viz., it is a letter of authority and but for this letter, there is no other letter or authorization to enable the applicant to sign the agreement has remained uncontrovered. Then, at the time of hearing, attention was drawn by learned advocate for the complainant to Page-38 and 39 in the petition and it was submitted that these two documents / letters if read along with the letter dated 14.7.2006, it would appear that later letter in question is suspicious. These (Page Nos.38-39) are the letters admittedly written by the applicant to the company. One is dated 16.6.2006 and another is dated 30.6.2006. Reliance was placed on this paragraph, which reads, thus;

"... I further instruct you to pass relevant entries in the books of the company that my interests are transferred to Mr.Naran Pindoria and furthermore I do not have any more financial or commercial interest left in the companies ownership or unsecured loans receivable."

In another letter :

"TO WHOM IT MAY CONCERN ... I have received the full and final payment for the sale of my interest from Mr.Naran Pindoria and herewith I do not have any

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receivables or claims due from either Mr.Naran Pindoria neither do I have any financial or other commercial interest in i-Service Systems Pvt. Ltd. Reg no.U64201GJ2002PTC40555 from this very day in context to ownership of the company. ..."

13.4 It may be noted that it is not in dispute that above writing is by the applicant. The letter dated 14.7.2006 is in the name of the complainant. Submission on behalf of the complainant is, having declared no claim or no due assertion as to the amount to be paid to the applicant was uncalled for. That such assertion raises suspicion. It is not possible to agree with this. It may be noted that purpose and context of both i.e. letter dated 14.7.2006 and writing at Page-38 and 39 are distinct and different. There is no reference at all to JCJ Locums company with whom the complainant company had made settlement in writing at Page-38 and 39. Secondly, the complainant has not drawn attention to any other letter of authorization issued to applicant to sign the settlement with other companies after retirement of applicant. Prima facie, it is letter enabling the applicant to sign the settlement. In any case the applicant would have tough time if the claim of the applicant of 50% of the agreed settlement sum solely based on this letter in question. Genuineness of the letter may be tested for that in that case. Claim of the applicant for such payment - if advanced - may be considered independently and mainly on the basis of other material. In the case on hand, we are concerned with the commission of an offence i.e. offence of theft and forgery by the applicant. In the above circumstances, it is possible to say that the circumstances are in favour of the applicant. That being so, interference is called for.

14 As to the complaint of theft of doors, learned advocate for the applicant has rightly drawn attention to complaint lodged in this regard in U.K.Court. This is mentioned by complainant himself in the present complaint. At the time of hearing, learned advocate for the complainant was unable to explain satisfactorily as to what has happened to complaint lodged at U.K. This aspect is in favour of applicant. Further, it was submitted at the time of hearing that during the pendency of the present petitions, applicant has deposited Rs.12,50,000/- before this Court. In this regard, learned advocates for the parties have advanced their version on this. Learned advocate Mr.Panchal has submitted that the amount is deposited without prejudice and under protest and it does not amount to admission of guilt. On the other hand, learned advocate Mr.Nanavati has submitted that by mere depositing of the amount, the offence does not cease to be an offence. Strictly speaking, depositing of amount in this criminal proceedings may not be considered to be relevant. In any case, I am of the opinion that considering the allegation made by the complainant, the nature of dispute is of civil nature. The accused is a former Director of the complainant s company. Offence of theft as alleged is inconsistent with the identity of the accused. Initiation of criminal proceeding and filing complaint of theft, in the circumstances of the case, is not proper. It may also be stated that at the time of hearing, attention was drawn to payment of customs duty etc. in respect of seven doors brought to India.

15 During the course of dictating this judgment, it was pointed out by learned advocate for the applicant that applicant is a citizen of U.K. At the time of hearing, this point was raised. Submission of learned advocate for the complainant proceeded on the footing that applicant is only NRI and not a British citizen. In this regard, learned Senior Advocate Mr.K.S.Nanavati has drawn attention to Section 4 of the IPC. Submission proceeded on footing that applicant is Indian citizen. Relying on Section 4(1), it was submitted that complaint against NRI is maintainable. Thereafter, during the course of dictating this

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judgment, it was pointed out by the applicant that applicants are citizens of U.K. Learned advocate for the applicant has also produced xerox copy of passport of the applicant. Same is taken on record. The matters were adjourned to enable the complainant to satisfy how the complaint is maintainable against the British citizen. Learned advocate for the complainant was not able to satisfy this Court that complaint against foreign citizen is maintainable in India. For this reason also, these complaints shall fail.

16 Lastly, reference may be made to complaint of theft of data from the computer of complainant's company. It is IC. R.No.15/2001 from which CR.MA No.9509 of 2009 has arisen. The complaint is dated 13.1.2009. One instance given in the complaint is, data of M/s.Silchester Estate Contract stolen by the accused and thereby, causing economic loss to the complainant. In this regard, there was civil litigation between the parties at U.K. The judgment delivered in the said civil litigation is produced at Annexure-V. At the time of hearing, learned advocate for the applicant has drawn attention to Para.6 and 12 of the judgment. To appreciate the say of the applicant, said paragraphs are reproduced, thus;

"06. As explained below, there are three commercial contracts in respect of which MIL claims that Mr Varsani has breached his duties to the company and/or is accountable to the company. The first of these (the Silchester Estate Contract) is concerned only with the first duty set out above, i.e. the duty of the director/employee during the course of his directorship/employment. The second and third contracts, viz. the Sulgrave Gardens and Wates contracts, are examples of the second situation, i.e. they are cases where it is alleged that Mr Varsani took advantage of quotations put in by MIL during his employment/directorship for the benefit of himself and/or his company Multistarcom and/or Pacestar. It is alleged that each of these was a maturing business opportunity used by Mr Varsani after his employment had ceased and his directorship had ended.

12. Thirdly, there have been a number of allegations and cross allegations relating to the destruction of documentary records, in particular held on computer, and/or of the failure to make proper documentary disclosure. I consider these allegations in the context of main issues summarised above. However, Mr Kinsky on behalf of MIL made it clear that he is not pursuing any independent relief in respect of the allegations of destruction of documents. The value, if any, of these allegations is to undermine the credibility of Mr Varsani and/or his case as developed before the court. I approach the allegations of documentary destruction in this light. I should also say, in fairness to Mr Varsani, that I would in any event not have found these allegations proved to my satisfaction. I note that two witnesses were called on behalf of the defendant, namely Mr Kumar Varsani, Mr Manubai Varsani's son, and Mr Hiren Raycha, both of whom gave evidence relevant to the alleged destruction of documents. These seem to me to have been essentially truthful witnesses, in the light of whose evidence I would be quite unable to find proved the allegations of destruction of documents, even if they were pursued as independent causes of action."

On bare reading of the above finding of the U.K.Court in civil litigation, it gives impression that it helps the applicant. However, it was pointed out by learned advocate for the complainant that in the end, the Court was pleased to award the damage directing the Manubhai Varsani to pay the damages in respect of M/s.Silchester Estate Contract. Beside that, in the complaint the allegation is not only with respect to theft of data of M/s.Silchester Estate Contract. It is alleged in the complaint that accused No.1 has stolen the other data and

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index of 35 to 40 assets supplied to the accused No.2 i.e. Manubhai Varsani. It is also the say of the complainant that theft of data has taken place at Gandhinagar. Hence, the complaint is filed at Gandhinagar Police Station.

16.1 In this regard also, material on record prima facie supports the say of the applicant. On reading of the complaint, it would appear that say of the complainant is of deletion of file and data in respect of M/s.Silchester Estate Contract. This is the principal grievance. As referred above, there is exhaustive judgment of U.K.Court in civil litigation in respect of M/s.Silchester Estate. Though in the civil litigation at the end the Court has awarded damage to the company, the Court has found the present applicant to be truthful witness (Para.12). The said Court has also not believed the assertion of destruction of document. These observations in civil litigation are sufficient to disbelieve the say of the complainant. The complainant does not say about the stealing of data, rather in the complaint he says, destruction of data / files relating to M/s.Silchester Estate Contract. In this regard, observation and finding of civil court supports the say of the applicant. Then, bald allegation of stealing data and index of 35 to 40 assets is too vague and too general and sweeping to form any opinion on such assertion. Further it is the say of the complainant that applicants have committed offence under Section 43 and 72 of the Information Technology Act,2000. Section 43 does not provide for damages. Alleged wrong that would attract Section 43 would not attract penal consequence. It does not provide so. While in the circumstances of the present case, it is doubtful that offence under Section 72 is attracted inasmuch as the allegations in complaint are not specific and as stated above, they are too bald, general and sweeping. The complaint need not be exhaustive in its detail but, sufficient germs should be there. Mere mentioning of the provision is not sufficient.

16.2 At this stage, learned advocate for the complainant has drawn attention to Section 66. It does provide doing of any act referred to in Section 43 as an offence. Learned advocate for the applicant has drawn attention of the Court that Section 66 of the said Act is inserted by amendment Act i.e. Act of 10 of 2009. That said Act came into force w.e.f. 27.10.2009, while the present complaint is filed on 13.1.2009. In the complaint, it is alleged that offence has taken place 2 years prior to the lodging of the complaint.

17 Submission of learned Senior Advocate Mr.Nanavati is that none of the complaints in the present case can be said to be so baseless or so frivolous that it calls for interference of this Court under Section 482 of Cr.P.C. It would be too broad proposition to say that unless the complaint is baseless or frivolous, the Court cannot interfere in exercise of power under Section 482 of Cr.P.C. Even if the complaint has some substance, the Court may step in and interfere when continuation of proceeding is abuse of process of law. In a sense, there is contradiction in this inasmuch as complaint, continuation of which amounts to abuse of process of law, cannot be said to have substance. Then, the Court may also intervene even if the complaint is not vexatious, if the ends of justice so requires in a given case. The present case is a typical one. Parties are residing at U.K. Accused are citizens of U.K. (except perhaps A1 in Special Criminal Application No.9509 of 2009) At least in respect of one complaint, criminal complaint for the same offence is filed before the Court at U.K. In respect of another case, civil litigation at U.K. Court is going on or disposed of.

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18 In all the three cases, complaint is filed against the person, who was/were formerly associated with the complainant s company. It is the specific allegation of the applicant in the petition that complainant s company is used to initiate legal proceedings against its former employee. Name of over half a dozen employees were given. This assertion remains uncontroverted. It is difficult to remain uninfluenced by these circumstances.

19 In view of above discussions and observations, present petitions deserve to be allowed and same are accordingly allowed. The complaints being I-C.R.No.222 of 2007 registered with Satellite Police Station, I-C.R.No.213 of 2007 registered with Sector-7 Police Station, Gandhinagar and IC. R.No.15 of 2009 registered with Sector-7 Police Station, Gandhinagar are hereby quashed and set aside. Rule is made absolute in each matter.

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