

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.672 OF 2017
(Arising out of SLP (Crl.) No.594/2017)

SANJAYBHAI CHANDULAL PAREKH

APPELLANT(S)

VERSUS

STATE OF GUJARAT AND ANR.

RESPONDENT(S)

O R D E R

- 1) Leave granted.
- 2) This appeal is directed against the judgment and order dated 25.11.2016 passed by the High Court of Gujarat at Ahmedabad, whereby the High Court dismissed the Criminal Misc. Application No. 30913 of 2016 preferred by the appellant herein under Section 482 of the Code of Criminal Procedure, 1973 seeking quashing of FIR filed against him for the offences punishable under Sections 406, 420 and 120B of the Indian Penal Code.
- 3) The only question which arises for our consideration is whether the FIR under challenge deserves to be quashed by the High Court.
- 4) The facts of the case, in brief, are as under:
 - i) An FIR was registered at the instance of the Complainant / Respondent No.2 at P.S. Kanbha, District Ahmedabad under Sections 406, 420 and 120B of the IPC against the appellant and other accused alleging that the land in question belongs to Nilakanth Mahadev Mandir.

- ii) The Accused Nos. 1 to 5 were the administrators of the said property and that they only had the right to manage property, however no right to sell the property was ever given to them.
- iii) The property in question was sold by the above accused persons to one Pratapbhai Dahyabhai Parmar (Accused No.6) for a consideration of Rs.1,90,000/- by executing a registered sale deed in his favour.
- iv) The above Accused No.6 sold the above land to the appellant-herein for a consideration of Rs.10,55,000/- by a registered sale deed executed on 21.12.2015.
- v) The Learned Judicial Magistrate, Ahmedabad enlarged the appellant on bail on 02.06.2016.
- vi) The appellant preferred a petition under Section 482 of the Code before the High Court seeking quashing of the above FIR against him.
- vii) The High Court by the impugned judgment dismissed the same.
- viii) Being aggrieved, the appellant preferred the above appeal by way of special leave.
- 5) Heard the learned counsel appearing for the parties.
- 6) Learned counsel appearing for the appellant drew our attention to the allegations made in the FIR, copy of sale deed, the impugned order of the High Court and contended that the High Court has erroneously dismissed the petition under Section 482 without giving any reasons insofar as in the impugned

FIR, no allegations whatsoever constituting the offences mentioned therein have been made against the appellant.

7) Learned counsel further contended that in the entire FIR there is not even a single averment against the appellant that he had purchased the property with any knowledge or dishonest or wrongful intention or has entered into any conspiracy with other accused persons and the FIR under challenge ought to have been quashed by the High Court in view of the facts which clearly goes to show that the same is an abuse of process of criminal law. Finally, he submits that the judgment impugned is bad in law and is liable to be set aside.

8) Per contra, learned counsel appearing of the State submits that the investigation is in progress and a prima facie case is made out for the purpose of investigation having regard to the nature of the allegations which disclose commission of a cognizable offence and the High Court was right in dismissing the application preferred by the appellant.

9) We have carefully perused the FIR and the Sale Deed which were placed before us. In the FIR, it is clear that no allegations whatsoever constituting the above offences have been made against the appellant. It appears from the facts that the appellant herein is the second purchaser of the property in question. Moreover, from the records, it is seen that the appellant is already on bail and the investigation is underway.

10) In our opinion, the High Court while deciding the petition seeking quashing of FIR under Section 482 CR.P.C. has

to appreciate the contents of the FIR and the material on record to form an opinion as to whether the offences as alleged in the FIR are even prima facie made out or not.

11) Having heard the learned counsel appearing for the parties and having considered the material available on record, we find no allegations of basic essential ingredients of dishonest misappropriation and cheating against the appellant and as such the prosecution of the appellant under Sections 406, 420 and 120B IPC is liable to be quashed.

12) As a consequence thereof, the FIR *qua* the appellant herein is quashed.

13) However, having regard to the nature of the allegations made, we make it clear that the respondents herein have a right to proceed in the matter and take appropriate steps to complete the investigation

14) With the aforesaid directions, the appeal is allowed.

15) We also make it clear that the observations made by us in this order shall not stand in the way of the investigating authorities to complete the investigation against the other accused.

..... J.
(PINAKE CHANDRA GHOSE)

..... J.
(ROHINTON FALI NARIMAN)

New Delhi;
April 07, 2017.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No.594/2017

(Arising out of impugned final judgment and order dated 25/11/2016 in CRLMA No. 30913/2016 passed by the High Court of Gujarat at Ahmedabad)

SANJAYBHAI CHANDULAL PAREKH

Petitioner(s)

VERSUS

STATE OF GUJARAT AND ANR.

Respondent(s)

(With interim relief and office report)

Date : 07/04/2017 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE PINAKI CHANDRA GHOSE
HON'BLE MR. JUSTICE ROHINTON FALI NARIMANFor Petitioner(s) Mr. Nikhil Goel, AOR
Mr. Naveen Goel, Adv.
Mr. Ashutosh Ghade, Adv.For Respondent(s) Mr. Kaustubh Anshuraj, AOR
Mr. Vikram Thakur, Adv.Ms. Hemantika Wahi, AOR
Ms. Jesal Wahi, Adv.
Ms. Mamta Singh, Adv.UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the Signed Order.

Pending application(s), if any, stands disposed of.

(RASHI GUPTA)
SR.P.A.(SNEH LATA SHARMA)
COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE]

