

HIGH COURT OF GUJARAT

**APOORVA L SANGHVI
V/S
STATE OF GUJARAT**

Date of Decision: 26 September 2011

Citation: 2011 LawSuit(Guj) 1019

Hon'ble Judges: [M D Shah](#)

Case Type: Special Criminal Application

Case No: 1113 of 2005

Subject: Criminal

Acts Referred:

[Indian Penal Code, 1860 Sec 405, Sec 34, Sec 420, Sec 409, Sec 468, Sec 471, Sec 467, Sec 120B, Sec 406](#)

[Code Of Criminal Procedure, 1973 Sec 156\(3\), Sec 245, Sec 239](#)

Final Decision: Petition allowed

Advocates: [H D Chudasama, K S Nanavati, L R Pujari, Y R Vaghela](#)

Judgement Text:-

M D Shah, J

[1] The present application has been filed by the petitioner-original accused No.4 for quashing and setting aside the order dated 11.7.2005 passed by the learned Judicial Magistrate First Class, Morbi in Criminal Case No.1545 of 2003 by which the learned

Magistrate has rejected the application for discharge submitted by the present petitioner under Section 239 and 245 of the Code of Criminal Procedure. The petitioner has also prayed to quash and set aside the chargesheet dated 26.7.2003 filed against the present petitioner.

[2] The brief facts giving rise to this application are as under:

2.1 The present petitioner is one of the accused cited in the chargesheet filed by the Morbi City Police before the Court of learned JMFC, Morbi for the offences punishable under Sections 405, 406, 409, 420, 120-B, 467, 468, 471 and 34 of Indian Penal Code wherein the present petitioner is cited as accused No.4 in the said chargesheet. A complaint has been filed by the Chairman of Morbi Nagarik Sahakari Bank Limited before the learned JMFC, Morbi for the above-referred offences, and below the said complaint, the learned Magistrate has passed the order directing for investigation under Section 156(3) of Cr.P.C.

2.2 It is alleged in the complaint that on 23.10.2001 a resolution of the Board of Directors of the respondent No.2 had been passed whereby it was decided to invest 10% amount in the Government Securities. It is further alleged that in pursuance to the said resolution the Board of Directors under resolution dated 25.2.2002 further resolved to invest an amount of Rs.1,10,10,000/- in the Government securities prior to March 2002 after appropriate negotiation in the board meeting the respondent No.2 had with M/s.Syndicate Management Services Pvt. Ltd. It is alleged that the said amount was to be invested through M/s.Syndicate Management Pvt. Ltd. It is further alleged that the accused No.1 Rameshchandra Shantilal Doshi, working as Manager of the respondent No.2 bank had issued a cheque for an amount of Rs.1,00,00,000/- in favour of M/s.Syndicate Management Services Pvt.Ltd and the same has been confirmed by M/s.Syndicate Management Services Pvt.Ltd. Thereafter Mr.R.S.Doshi, Manager of respondent No.2 bank further issued a cheque for an amount of Rs.27,50,722/- in favour of M/s.Syndicate Management Services Pvt.Ltd. which is confirmed by M/s.Syndicate Management Services Pvt.Ltd. It is further alleged that Mr.R.S.Doshi, manager of respondent No.2 bank had again issued a cheque of differential amount of Rs.1,67,400/- in favour of Syndicate Management Services Pvt. Ltd., in view of the transaction that

Syndicate Management Services had done on behalf of respondent No.2 bank. Thereafter on 7.6.2002 the respondent No.2 bank had passed the resolution to initiate prosecution against the petitioner along with other accused. The respondent No.2 bank had filed complaint on 7.6.2002 wherein the petitioner is arrayed as an accused No.4. Thereafter M/s.Syndicate Management Services Pvt. Ltd., had filed a criminal complaint being Criminal Case No.653 of 2002 against Mr.Sanjay Agarwal and Mr.Mahendra Agarwal in respect of various offences committed by the accused, more particularly misappropriating and cheating the said Syndicate Management Services in respect of various transactions including respondent No.2 had with Syndicate Management Services Pvt. Ltd.

2.3 It is alleged that the petitioner had introduced the bank to Syndicate Management and that he had attended a meeting where the decision was made to invest in Government securities. As far as chargesheet is concerned, Syndicate Management had not delivered the securities and had misappropriated the funds. The learned trial Judge come to the conclusion that if any offence is made out then only the Investigating Officer can file the chargesheet and considering the statement of the witnesses, prima facie involvement of the accused is established and thereby the trial court vide impugned order dated 11.7.2005 passed below Exh.14 in Criminal Case No.1545 of 2003 rejected the application for discharge preferred by the petitioner. Hence the present petition.

[3] Heard learned Senior Counsel Mr.K.S.Nanavati for the petitioner, learned APP Mr.L.R.Pujari for the respondent No.1-State and learned advocate Mr.Chudasma for the respondent No.2- original complainant.

[4] It is submitted by learned Senior Counsel Mr.K.S.Nanavati for the petitioner that, on basis of the statement of one Tusharbai, the present petitioner was cited as accused in the chargesheet. It is further submitted that, even if we believe the statement of Tusharbai, then also the present petitioner is nowhere involved in the said offences. It is also submitted that the ingredients of aforesaid sections are not attracted and there is no iota of evidence against the petitioner and nothing is reflected from the paper of chargesheet that the petitioner has forged any documents or securities or gain any monetary benefits from this transaction. It is, therefore, submitted that the trial court has

not considered the same and thereby committed an error in rejecting the discharge application of the present petitioner. In view of the above, it is requested to allow the application.

[5] It is submitted by learned advocate Mr.Chudasma for the original complainant that when the trial court has come to the conclusion that the prima facie accused is involved in the crime then this Court should not interfere with the order passed by the trial court as the accused will get all opportunity during the trial, and if prosecution is failed to prove the case then the accused should be acquitted. It is also submitted that no prejudice would be caused to the accused by rejecting the said application as the accused will get full opportunity before the trial court for cross-examination of the witnesses as well as to lead the evidence. It is also submitted that no error is committed by the trial court and hence this application deserves to be dismissed.

[6] This Court has gone through the papers of the chargesheet as well as also perused the statements of the witnesses more particularly statement of Tusharbai by which the present petitioner has been joined as accused in the chargesheet. It is also admitted fact that the only allegation against the present petitioner (original accused) that he had introduced the complainant to Syndicate Management and that he had attended the meeting when the decision was taken to invest the funds in the Government Securities. Except these allegation nothing was found in the papers of chargesheet which connect the accused with the crime. It is also not the case of the prosecution that the present petitioner has received any monetary benefits from the said transaction. It is also admitted fact that the Reserve Bank of India had also filed complaint before the learned JMFC, Morbi where the complainant himself is an accused and present petitioner original accused No.4 is not joined by the RBI as accused in the said complaint. Except these bare words regarding the conspiracy committed by the present petitioner and the other accused, nothing is come out on record to show that the accused is involved in committing the crime. Even if we believe the statement of the witnesses more particularly the statement of Tusharbai then also the role attributed by the present petitioner is that he had introduced the Syndicate Management to the complainant and remained present in the meeting, whether these allegations are sufficient to constitute the offence alleged in the chargesheet, then in the opinion of this Court the answer is no. Normally while deciding the discharge application it is not required to consider by the Court whether the accused is convicted or acquitted but the Court is only required to see that whether strong suspicion is there to initiate the criminal proceedings or not. In this case there is no prima facie material has been found against the present petitioner

to initiate the criminal proceedings and the trial court has not considered the said aspect and thereby the trial court committed an error in rejecting the said application.

[7] As discussed above, the present petitioner original accused No.4 has not gain any monetary benefits nor there is allegation of any kind of fraud committed by the present petitioner. In view of the above, the petition is allowed. The impugned order dated 11.7.2005 passed by the learned Judicial Magistrate First Class, Morbi in passed below Exh.14 in Criminal Case No.1545 of 2003 and the proceedings thereunder are hereby quashed and set aside qua against the petitioner-original accused No.4 only and the present petitioner original accused No.4 is hereby discharged for the offences levelled against him. Rule is made absolute.

