

HIGH COURT OF GUJARAT

**BHUPENDRASINH PRABHATSINH SOLANKI
V/S
STATE OF GUJARAT**

Date of Decision: 06 March 2012

Citation: 2012 LawSuit(Guj) 1694

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

Eq. Citations: 2012 (30) GHJ 184

Case Type: Special Criminal Application

Case No: 1855 of 2009

Subject: Constitution, Criminal

Acts Referred:

[Constitution Of India Art 226](#)

[Indian Penal Code, 1860 Sec 408](#), [Sec 420](#), [Sec 114](#), [Sec 409](#), [Sec 468](#), [Sec 471](#), [Sec 467](#), [Sec 120B](#), [Sec 406](#)

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

Important Para: [7](#),

Advocates: [K S Nanavati](#), [L B Dabhi](#)

Reference Cases:

[Cases Referred in \(+\): 1](#)

Judgement Text:-

M R Shah, J

[1] As common question of law and facts arise in this group of Special Criminal Applications, they are disposed of by this common judgment and order.

[2] Special Criminal Application No. 1855/2009 under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "CrPC") has been preferred by the petitioners herein - original accused - Chairman and Managing Director of the Panchmahals District Cooperative Milk Producers' Union Ltd, to quash and set aside the impugned FIR being C.R. No.1-4/2009 registered with 'B' Division Godhra City Police Station lodged by respondent No.2 herein - original complainant - Assistant Cooperative Officei (Audit), Office of District Registrar, (Cooperative Societies), Godhra, Panchmahals for the offences punishable under Sections 467, 468, 408, 409, 420, 471 and 120B of the Indian Penal Code, 1860 (hereinafter referred to as "IPC").

2.1 Special Criminal Application No.1966/2009 under Article 226 of the Constitution of India read with Section 482 of the CrPC has been preferred by the petitioners herein - original accused to quash and set aside the impugned FIR being C.R. No.I-8/2009 registered with 'B' Division Godhra City Police Station lodged by respondent No.2 herein - original complainant - Office Superintendent, District Registrar (Cooperative Societies), Godhra, Panchmahals for the offences punishable under Sections 406 and 114 of the IPC.

2.2 Special Criminal Application No.262/2010 under Article 226 of the Constitution of India read with Section 482 of the CrPC has been preferred by the petitioner herein - original accused to quash and set aside the impugned FIR being C.R. No.I-17/2009 registered with 'B' Division Godhra City Police Station lodged by respondent No.2 herein - original complainant - Cooperative Officer, District Registrar (Cooperative Societies), Godhra, Panchmahals for the offences punishable under Sections 406 and 114 of the IPC.

[3] It is alleged in the FIR being C.R. No.I-4/2009 registered with 'B' Division Godhra

City Police Station (subject matter of Special Criminal Application No. 1855/2009) that the original complainant is serving as Assistant Cooperative Officer (Audit) in the office of District Registrar (Cooperative Societies), Godhra and that one complaint was received in the office of District Registrar (Cooperative Societies) by four tribal persons that in their name the government subsidy is shown to have been given by the Panchmahals Dairy and infact they have not received any government subsidy. It is further alleged that Central Government floated a scheme for giving 50% subsidy to the tribal agriculturists for purchase of buffaloes and for that per buffalo Rs. 14,000/- was to be considered as price of the buffalo and under the scheme, 50% - Rs.7000/- was to be given to the tribal agriculturists as subsidy. It is further alleged in the said FIR that for implementation of the said scheme and whether the same is properly implemented or not, is the duty of the Chairman and the Managing Director of the Panchmahals Dairy and the amount of subsidy was required to be paid through their office at Godhra. It is alleged in the said FIR that it was alleged in the complaint that till date they have not submitted any application for purchase of buffalo nor they have given any consent. It is submitted that it was specifically complained that they were not asked by the Panchmahals Dairy. It is further alleged that therefore there is large scale irregularities, illegalities and misappropriation of the amount and the amount of subsidy is alleged to have been given and/or misappropriated by creating false documents and they have used the said fund for themselves. It is further alleged in the said FIR that the Sub-Registrar of the Cooperative Societies inquired into the allegations in the complaint made by the aforesaid four tribal agriculturists and he submitted report to the District Registrar, Godhra on 31.08.2009 and it was submitted in the said report that though only four tribal agriculturists have made the complaint, if the allegations are further investigated, it is likely that there is possibility of misappropriation of more amount by creating false documents and therefore, the impugned FIR has been filed for the aforesaid offences against the petitioners by alleging inter-alia that the petitioners - original accused and others have in connivance with each other created the false documents and record and have misappropriated huge amount of government subsidy and have used for their own benefits. Therefore, it is alleged that the petitioners and other persons have committed offences punishable under Sections 467, 468, 408, 409, 420, 471 and 120B of the IPC.

3.1 That a similar FIR has been lodged by respondent No.2 herein - Office Superintendent, District Registrar (Cooperative Societies), Panchmahals being C.R. No.I-8/2009 registered with 'B' Division Godhra City Police Station against the petitioners (subject matter of Special Criminal Application

No. 1966/2009) alleging inter-alia that in the year 2008-2009, the Panchmahals District Cooperative Milk Producers' Union Ltd. have alleged to have given subsidy of Rs.64 lacs to 400 beneficiaries/ tribal agriculturists i.e.'Rs.16,000/- per buffalo though no such permission was granted by the Collector, Dahod and though no such subsidy was received from the Government.

3.2 So far as FIR being C.R. No.I-17/2010 registered with 'B' Division Godhra City Police Station lodged by respondent No.2 herein - Cooperative Officer, Office of District Registrar (Cooperative Societies), Panchmahals, at Godhra (subject matter of Special Criminal Application No.262/2010) is concerned, similar offences punishable under Sections 406 and 114 of the IPC are alleged to have been committed by the petitioner during the period between 01.04.2008 to 31.03.2009 and an amount of Rs.85,25,000/- is alleged to have been paid by way of subsidy to 818 beneficiaries (tribal agriculturists).

3.3 Being aggrieved and dissatisfied with the impugned FIRs, petitioners herein - original accused have preferred the present Special Criminal Applications under Article 226 of the Constitution of India read with Section 482 of the CrPC to quash and set aside the impugned FIRs.

[4] So far as Special Criminal Application No. 1855/2009 is concerned, it is submitted by Shri K.S. Nanavati, learned counsel appearing on behalf of the petitioners that as such the petitioners have not committed any offence as alleged and as such the subsidies have been paid to the respective beneficiaries/tribal agriculturists for the purchase of buffalo and the same has been disbursed after following due procedure as required. It is submitted that the impugned FIR has been lodged with malafide intention and political vendetta. It is further submitted that as such only four persons have made grievance out of 140 beneficiaries. Making above submissions, it is requested to quash and set aside the impugned FIR which is filed with malafide intention and political vendetta.

4.1 So far as Special Criminal Application Nos.1966/2009 and 262/2010 are concerned, it is submitted by Shri K.S. Nanavati, learned counsel appearing on behalf of the petitioners that as such the petitioners have not committed any offence as alleged. It is further submitted that impugned FIRs are filed

by the officers of the Cooperative Department with malafide intention and with political vendetta. It is submitted that as such subsequently the Dairy received subsidy and in anticipation of getting the subsidy, the petitioners and Panchmahals District Milk Producers' Union Ltd. disbursed the subsidies to the beneficiaries of the scheme - tribal agriculturists for the purpose of purchasing the buffalo and that too after following due procedure as required. Therefore, it is submitted that as such it cannot be said that the petitioners have misappropriated the amount and/or have committed offences under Sections 406 of the IPC as alleged.

4.2 It is further submitted by Shri K.S. Nanavati, learned counsel appearing on behalf of the petitioners that as such the impugned FIR is nothing but abuse of process of law and the Court and the same has been lodged with political vendetta with a view to pressurize the petitioners and other persons who are in management of the Union. Making above submissions, it is requested to allow the present petitions and to quash and set aside the impugned FIRs.

[5] All these petitions are opposed by Shri L.B. Dabhi, learned Additional Public Prosecutor appearing on behalf of the State. It is submitted that as such the impugned FIRs are filed on the basis of audit reports submitted by the auditors and after holding necessary preliminary inquiry. It is submitted that there are specific allegations and averments in respective FIRs making out prima facie cognizable offences which are further required to be investigated. It is submitted that a huge amount on account of subsidies is alleged to have been paid to the tribal agriculturists. However, the complaints are received that as such no subsidy is received by the concerned beneficiaries and as such four such alleged beneficiaries in whose name the subsidies have been paid have made a complaint that they have not received any subsidy and therefore, it is apprehended that if a thorough investigation is made, there are possibilities that it may come out that more number of beneficiaries might not have got the subsidy which is alleged to have been paid to them and if it is investigated, it will be a case of huge misappropriation of huge amount of subsidy which is received under the Central Government grant. It is further submitted that all the FIRs are required to be read together and whether all the beneficiaries - tribal agriculturists have received the subsidy or not, is required to be investigated thoroughly by the IO and therefore, it is

requested to dismiss the present petitions.

[6] Heard the learned advocates appearing for respective parties at length and considered the averments and allegations in the respective FIRs. It is required to be noted that as such impugned FIRs are filed by the Government Officers from the Cooperative Department making allegations with respect to misappropriation of huge amount of subsidy received from the Central Government which is alleged to have been paid to the tribal agriculturists by creating forged documents and records. It is required to be noted that atleast four tribal agriculturists have made complaint before the department that they have not received any subsidy and that they have not made any application for getting subsidy. The allegations made in the complaint by four tribal agriculturists came to be investigated and/or inquired by the concerned department and after holding preliminary inquiry it has been found that there is substance in the complaints and the impugned FIR has been filed submitting that if investigation is made with respect to disbursement of the subsidy of huge amount, it is apprehended that the misappropriation of a huge amount may come out and whether all the tribal agriculturists/beneficiaries who are alleged to have been given the subsidy, ever received or not, is required to be investigated by the IO. Merely because only four persons have made the complaints, it cannot be presumed that all the other persons have received the subsidy. It is required to be noted that the subsidy was to be given to the tribal agriculturists for purchase of buffalo and it is alleged that the subsidy has been disbursed by creating forged documents and records. Therefore, if the further investigation is carried out then and then only the truth may come out and it can come out whether tribal agriculturists who are alleged to have received the same have in fact received or not. In other FIRs it is specifically alleged after holding inquiry and on the basis of audit report that though there was no approval by the Collector, P.M. and though at the relevant time the grant/subsidy amount was not received, a huge amount of Rs.64 lacs and Rs.85 lacs respectively have been alleged to have been disbursed. Under the circumstances and considering the facts and circumstances of the case and allegations made in the impugned FIRs, which are on the basis of the complaints received from the tribal agriculturists and after audit report, no case is made out to quash and set aside the impugned FIRs in exercise of powers under Section 482 of the CrPC and that too at the threshold and without permitting the IO to conduct the investigation with respect to disbursement of the subsidy of huge amount to the tribal agriculturists.

6.1 Now, so far as the contention on behalf of the petitioners that impugned

FIRs are filed with malafide intention and with political vendetta is concerned, on the aforesaid ground the impugned FIRs prima facie making out cognizable offences which are required to be further investigated, are not required to be quashed and set aside. As observed by the Hon'ble Supreme Court in the case of [PARKASH SINGH BADAL AND ANR. V. STATE OF PUNJAB AND ORS. REPORTED IN](#), 2007 1 SCC 1, the FIRs are not required to be quashed and set aside solely on the ground of allegations of political vendetta. As observed by the Hon'ble Supreme Court in the case of Parkash Singh Badal , a plea of malafide is not only to be clearly pleaded but specifically proved by adducing cogent evidence. It is further observed that mere allegations and suspicions would not be sufficient. It is further observed by the Hon'ble Supreme Court in the said decision that when the allegation is made, investigation is undertaken to find out whether there is any substance in the allegation. Merely because the political opponent was the complainant, that does not perse lead to an inference that the complaint has to be thrown out or that no notice should be taken thereof. It is further observed by the Hon'ble Supreme Court in the said decision that the ultimate test is whether the allegations have any substance and an investigation should not be shut out at the threshold because a political opponent or a person with political difference raises an allegation of commission of offence.

[7] In view of the above and for the reasons stated above, no case is made out to exercise powers under Section 482 of the CrPC and to quash and set aside the impugned FIRs at the threshold and without permitting the IO to investigate into the allegations made in the impugned FIRs. The allegations and averments made in the FIRs are required to be investigated thoroughly and the IO is required to investigate whether all the tribal agriculturists / beneficiaries have received the subsidy or not? It is alleged that the subsidy have been disbursed to tribal agriculturists for purchase of buffalo by creating forged documents and records and subsidy have not been received by the concerned tribal agriculturists to whom it is alleged to have been paid.

7.1 In view of the above and for the reasons stated above, all these petitions fail and the same deserve to be dismissed. Rule is discharged in all the petitions. Ad-interim relief granted earlier stands vacated forthwith.