

NIRAV NAVINBHAI SHAH VS STATE OF GUJARAT AND OTHERS

NAME OF THE COURT – GUJARAT HIGH COURT

CITATION – 2006 GLH (3) 71

BENCH – S Brahmhatt

DATE OF JUDGEMENT – 28th September, 2006

FACTS:

1. Shri Patel, learned Addl. P.P. waives service of Rule on behalf of Respondent No. 1 - State of Gujarat and Shri Saurabh Amin, learned Counsel waives service of Rule on behalf of the Respondent No. 2. On 21.09.2006 this matter was heard at length and it was kept for orders on 22.09.2006 as Counsels for both the sides wanted to cite authorities in support of their respective stand.
2. The applicants, original accused in Crime I.C.R. No. 54 of 2004 dated 26.02.2004 registered with Sector 7 Police Station Gandhinagar for punishable offences have preferred this application under [Section 482 of the Code of Criminal Procedure, 1973](#) which are pending before the Judicial Magistrate First Class Gandhinagar, mainly on the grounds that the facts and allegation leading to lodging FIR show that the real dispute was a civil dispute and as the same has been amicably settled between the parties, no useful purpose would be served in continuing the criminal proceedings, rather continuation of same would be counter-productive to the interest of justice.
3. The Respondent No. 2, original complainant, who is Director of I-Serve System Pvt. Ltd. (herein after referred to as 'the complainant') filed a written complaint to the Police Inspector, Gandhinagar Police Station on 26.02.2004 against the present applicants (herein after referred to as 'original accused') alleging commission of punishable offences.
4. Shri M.A. Patel, Learned A.P.P. has submitted that this being not a fit case, the criminal proceedings may not be quashed.
5. However, Shri Patel for the State could not dispute the proposition of law in the aforesaid decisions cited for quashing the criminal proceedings in peculiar facts and circumstances of this case. Shri Patel urged that as the facts are different in the present case no interference was called for. Shri Patel's submission could be set out as under.

ISSUES:

1. Will the oral testimony of the witness will be sufficient to take action?
2. Will the court only this view as Civil dispute between the parties?

RULES:

Offences punishable under IPC to the applicants who originally accused in Crime are as follows:

- i. [Section 381](#)-Theft by servant or clerk of property in possession of master or employer.
- ii. [Section 408](#)-Whoever, being a clerk or servant or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.
- iii. [Section 415](#) - Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to 'cheat'.
- iv. [Section 418](#) - Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.
- v. [Section 420](#) - Cheating and dishonestly inducing delivery of property.
- vi. [Section 66](#)¹ - It is a punishable offence of any person to send any offensive messages by means of computer resource or a communicative device.

ANALYSIS:

The judgment came that the complaint also does not contain any essential ingredient for maintaining criminal proceeding for the alleged offences. As it is stated in the arguments of the learned counsels that the parties have filed civil suits also in respect of the same dispute. The entire dispute between the parties is resolved by amicable settlement. The alleged hacking is perpetrated on the Complainants computer system only which said to have data pertaining to its client. The Counsels have submitted that on some of the web sites these data are already available. The dispute appears to be private in nature. The offence alleged is not strictly affecting or infringing any other individual or citizen. Thus looking to the nature of the disputes, it can well be said that continuation of the same is not in interest of justice. It was held that the FIR 54 of 2004 registered at sector 7 Police Station Gandhinagar and resultant Criminal Case No. 3528 of 2004 pending before the JMFC Gandhinagar deserve to be quashed in the interest of just and hereby they are quashed. Rule is made absolute.

CONCLUSION:

In the present case, the complainant and three other witnesses have already been examined and arrived at between the parties to end all civil as well as criminal litigations pending between them in various courts. In the present world, everyone is getting increasingly dependent on consistent access and

¹ Of Information Technology Act, 2000



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CASE ANALYSIS

accuracy of these communication channels. This clearly indicates that the impact of Information Technology is very profound.



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