IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE FIR/ORDER) NO. 16103 of 2020

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NATWARLAL MOHANLAL PRAJAPATI

Versus

STATE OF GUJARAT & ANR.

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Appearance:
MR. YOGENDRA THAKORE(3975) for the Applicant(s) No. 1
MS. KRINA CALLA, APP for the Respondent(s) No. 1
RULE SERVED for the Respondent(s) No. 2

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CORAM:**HONOURABLE MR. JUSTICE ILESH J. VORA**

Date : 15/04/2024

ORAL ORDER

1. This quashing petition under Section 482 of the Cr.P.C. is filed by the original accused in relation to the FIR being C.R. No. 11206062200632 of 2020, registered with Satlasna Police Station, Meshana District, for the offence punishable under Sections 465, 468, 471 and 114 of the IPC.

2. This Court has heard learned Sr. Counsel Mr. Y.M. Thakore, appearing for the applicant and Ms. Krina Calla, learned Additional Public Prosecutor for the State. Despite service of notice, the second respondent Kanakba Parmar has chosen not to appear and throughout the proceedings, she remained absent.

3. According to the case of the second respondent, she having a joint family property, situated at village Hadol, Satlasna, the accused Nos. 1 and 2 being brothers, by forging their signatures, got three phase connection from the Electricity Company. The present applicant, without her personal presence, notarized the alleged forged consent, which has not been signed by the applicant. In such circumstances, she lodged an FIR against her two brothers and the applicant notary, for the offence of forgery and forgery for the purpose of cheating.

4. The applicant herein, by preferring this application, seeks quashing of the said FIR, mainly on the ground that the FIR and subsequent proceedings thereto, are not maintainable. As, in view of the provisions of Section 13 of the Notaries Act, 1952 and the Rules thereunder, the Court cannot take cognizance of any offence committed by a Notary, in exercise or purported exercise of his functions, under the said Act, unless a complaint in writing has been made by an Officer authorized by the Central Government or a State Government, by general or special order in this behalf.

5. Mr. Thakore, learned counsel appearing for and on behalf of the applicant has submitted that in view of

the prohibition in Section 13 of the Act, the Court concerned will not be able to take cognizance of the offence, qua the applicant, unless the complaint by the authorized person is filed and, therefore, on this ground, the questioned FIR against the applicant Notary, deserves to be quashed.

6. Ms. Krina Calla, learned Additional Public Prosecutor has submitted that the investigation is still not completed and therefore, the application at this stage questioning legality of the proceedings, may not be entertained.

7. Having regard to the facts and circumstances of the present case, the present case is squarely covered by the judgment and order of the Coordinate Bench of this Court [Ashok Ghantivala - (2009) 2 GLH 491] and [Mohammed Yusufbhai - 2015 (0) AIJEL- HC 233352]. The applicant has been appointed as a Notary and as per the allegations, in exercise of his functions under the Notaries Act, he notarized the disputed documents referred in the FIR by the complainant. Thus, the allegations made against the applicant, which touches the official performance as a Notary and in that view of the matter, the proceedings by aggrieved party or private party initiated, is not maintainable, as under Section 13 of

the Notaries Act, the Notary has been protected unless the complaint in writing is made by the person referred in the Section 13 of the Act. Thus, therefore, once there is expressed bar for initiation of proceedings then, without following the statutory procedure, the criminal proceedings deviating the mandatory procedure, cannot be filed or initiated.

8. For the reasons recorded, the criminal proceedings, as referred above and consequential proceedings thereof, qua the applicant, are quashed. It is open for the authority concerned, to initiate a fresh proceeding against the applicant, in accordance with law. Rule is made absolute to the aforesaid extent.

(ILESH J. VORA,J)

SAJ GEORGE