



2023 INSC 1045

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.3259/2023

DIGVIJAYSINH HIMMATSINH JADEJA APPELLANT(S)

VERSUS

THE STATE OF GUJARAT & ORS. RESPONDENT(S)

O R D E R

We have heard learned counsel for the parties at some length.

The examination of the common impugned judgment dated 05.05.2017, passed by the High Court of Gujarat at Ahmedabad in Special Criminal Application (Quashing) No. 4758 of 2015 and Special Criminal Application No.4759 of 2015, allowing and accepting the prayer for quashing of First Information Report¹ No.CR I/2/2015 dated 23.01.2015 registered at Police Station Gandhinagar Zone, District - Gandhinagar, Gujarat, would show that a detailed factual examination and evaluation has been undertaken. We are of the opinion that the said examination and evaluation should not have been done by the High Court. There are disputed questions of fact, as the private respondent(s) have taken a plea that the two agreements dated 25.07.2013 and 13.08.2013 are not binding on the company - Geetanjali Jewellery Retail Limited²,

1 For short "FIR"

2 For short "GJRL"

which is a subsidiary of Gitanjali Gems Limited. Learned counsel appearing on behalf of the appellant - Digvijaysinh Himmatsinh Jadeja in fact submits that the agreements are valid and binding. It is also submitted that in terms of the agreement dated 13.08.2013, the private respondent(s) had agreed to return 24 karat pure gold bars for which the consideration or price stood paid, but were in deposit with GJRL in fiduciary capacity.

Learned counsel for the appellant - Digvijaysinh Himmatsinh Jadeja has also drawn our attention to documents in the form of confirmation letters, which are signed by Mr. Santosh Srivastava as the Managing Director at GJRL and Mr. Shivendra Singh, Associate Vice-President (Finance), on behalf of GJRL, as well as the statement of accounts, which again is signed by the aforesaid persons. These documents, it is submitted, confirm the fiduciary nature of the deposit.

The stand of the private respondent(s) is that Mr. Santosh Srivastava had resigned on 09.12.2013, and the agreements executed by him were without authority.

But these assertions noted above are disputed factual questions. The private respondents have not disputed the signatures of Mr. Santosh Srivastava or Mr. Shivendra Singh, or their designation. Some documents are also signed by Mr. Shivendra Singh

The impugned judgment refers to the requirements of Sections 406 and 420 of the Indian Penal Code, 1860³. We are not examining the said aspects in detail, as first, facts have to be ascertained, including the nature and character of the deposit.

³ For short "IPC"

We must also take note of the contention raised by the learned counsel for the private respondent(s) that there are contradictions emerging in the stand taken by the appellant - Digvijaysinh Himmatsinh Jadeja in the notice dated 15.07.2014, which refers to breach of contract and another notice/letter dated 23.08.2014.

We should not go into these aspects, as it is a matter to be considered and examined in the investigation. A wrong may be civil wrong, or in a given case be a civil wrong and equally constitute a criminal offence. The ingredients of a criminal offence should be satisfied. We would refrain to make detailed observations in this regard, though we have considered the said notice before passing this order. The contention of the appellant - Digvijaysinh Himmatsinh Jadeja is that assertions and all allegations have to read holistically and not in a pedantic manner.

Another contention raised by the learned counsel for the private respondent(s) is that the appellant - Digvijaysinh Himmatsinh Jadeja has not accounted and paid for the sale proceeds in terms of the agreement dated 13.08.2013, which has been described as "Operational and Commercial Agreement." This submission on behalf of the private respondent(s) has been accepted in the impugned judgment.

The appellant - Digvijaysinh Himmatsinh Jadeja has taken an exception to the said reasoning on several grounds. One of the arguments is that the reasoning does not take into account the specific clause in the agreement dated 13.08.2013, which agreement in fact accepts the agreement dated 25.07.2013, but does not, in

any way, override the fiduciary relationship with respect to the gold bars. Set off, it is submitted, is not available. Suffice it is to observe that the High Court should not have examined and recorded conclusion on the disputed fact to quash the FIR. At this stage, we record that pursuant to the registration of the FIR, the investigation had proceeded. The order dated 14.09.2016 passed by the High Court states that 17 persons had been examined by the investigating officer(s) and statements under Section 161 of the Code of Criminal Procedure, 1973⁴ had been recorded. The High Court notes that statements under Section 164 of the Code had also been recorded. These were not considered.

Our attention is drawn to paragraph 49 of the impugned judgment, with specific reference to respondent - Priti Mehul Choksi. We believe that these observations are general observations to the effect that a wife/spouse could not be said to be involved vicariously. The appellant - Digvijaysinh Himmatsinh Jadeja submits to the contrary. We would not like to make any comments as it is only upon investigation, that a specific role attributable to respondent - Priti Mehul Choksi, if any, would be ascertained.

In view of the aforesaid, the impugned judgment is set aside and the appeal is allowed in the above terms.

The observations in this order will not be read as comments or observations on the merits of the case. Investigation will continue without being influenced by any of the findings or observations made in the impugned judgment or in the present order. We also clarify that while conducting the investigation, the

⁴ For short "Code"

Investigating Officer(s) will keep in mind the rulings of this Court and High Courts interpreting Sections 406, 420, 464 and 465 etc. of the IPC.

Pending application(s), if any, shall stand disposed of.

.....J.
(SANJIV KHANNA)

.....J.
(S.V.N. BHATTI)

NEW DELHI;
NOVEMBER 29, 2023.