

WWW.LIVELAW.IN

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 3665 of 2019
With
CRIMINAL MISC.APPLICATION (DIRECTION) NO. 1 of 2019
In R/SPECIAL CRIMINAL APPLICATION NO. 3665 of 2019

FOR APPROVAL AND SIGNATURE:
HONOURABLE MS. JUSTICE GITA GOPI

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	---
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	----

RAJATKUMAR KANTIBHAI PATEL
 Versus
 STATE OF GUJARAT

Appearance:

MR. BAKUL S PANCHAL(3676) for the Applicant(s) No. 1
 MS.AKSHITABA SOLANKI(6782) for the Applicant(s) No. 1
 MR MAHESH BHAVSAR, ADVOCATE WITH MS SONAL J BHAVSAR(7399)
 for the Applicant(s) No. 1
 for the Respondent(s) No. 2,3,4,5,6,7
 MS MONALI BHATT, ADDL. PUBLIC PROSECUTOR(2) for the
 Respondent(s) No. 1

CORAM:HONOURABLE MS. JUSTICE GITA GOPI

Date : 02/07/2021

ORAL JUDGMENT

1. Rule. Learned APP waives service of rule on behalf of respondent-State.

WWW.LIVELAW.IN

2. The petitioner has filed this petition under Article 226 of the Constitution of India and under Section 482 of the Code of Criminal Procedure, 1973, (for short "the Code") seeking issuance of necessary appropriate write, order or direction to the respondents No. 1 to 3 to take appropriate action and hold an inquiry, investigation in connection with the threats given to the applicant by the then Investigating Officer - respondent No.5 M.G. Chauhan, Police Sub-Inspector, Mahesana Taluka Police Station and respondent No.5 - Dinesh, Officer of DSP Squad, Mahesana, in connection with FIR bearing C.R. No. I - 57 of 2018 registered with Mahesana Taluka Police Station on dated 05.04.2018 for the offences punishable under Sections 354, 323, 427, 504, 506(2) and 114 of the Indian Penal Code and under Section 135 of the Gujarat Police Act.

3. Mr. Mahesh Bhavsar, learned advocate appearing on behalf of the applicant submitted that the applicant seeks personal protection, inquiry and investigation against the respondents no.5 and 6 for having demanded money in view of illegal gratification from the applicant. Learned advocate Mr. Bhavsar stated that Niyatiben, cousin sister of the present applicant had a family dispute with her husband, and alongwith Niyatiben, the applicant had gone to Umiya Plywood Industries at Mahesana on 03.04.2018 for the purpose of compromise. He proposed to file an FIR at "B" Division Police Station, Mahesana, but since the police had found a family dispute, asked him to settle the dispute, and therefore, he left the police station alongwith Niyatiben.

3.1 Mr. Bhavsar, learned advocate submitted that owing to

WWW.LIVELAW.IN

the cruelty meted out by the husband and in-laws of Niyatiben, she tried to consume extra-dose of medicines on 05.04.2018 at Visnagar, and due to that, she became unconscious and was hospitalised and thereafter an FIR being C.R. No. I - 20 of 2018 was registered against her husband and in-laws at Visnagar City Police Station for the offences punishable under Sections 323, 498(a), 504 and 114 of the Indian Penal Code on 06.04.2018.

3.2 It is submitted by learned advocate Mr. Bhavsar that, as a counter-blast of the incident dated 05.04.2018, the husband of Niyatiben, Deepak Mavjibjhai Patel had given false and concocted information of the incident which had taken place on 03.04.2018 and completely false FIR being C.R. No. I - 57 of 2018 came to be lodged at Mahesana Taluka Police Station.

3.3 Learned advocate for the applicant submitted that in fact the applicant himself was beaten on 03.04.2018 at Umiya Plywood Industries for which FIR was not registered by Mahesana "B" Division Police Station inspite of the fact that the whole incident was recorded in CCTV camera of Umiya Plywood Industries and the CCTV footage were also not recovered by the police, and therefore, it shows that there is deliberate act on the part of the police in not registering the FIR of the incident in question.

3.4 Learned advocate for the applicant submitted that, after a period of one month for the purpose of compromise and settlement, the respondents No.5 and 6 have extracted Rs.50,000/- from the applicant. It is stated that the said amount was paid by one Jaysinh Rana, on behalf of the

present applicant. Thereafter on 07.08.2018 the respondent No.5 had called the applicant at Motera Hotel, where Jaysinh Rana, the driver of the applicant and Gautam Vyas, social worker met respondent No.5 and then again the demand of Rs.1.00 lakh was made by him. It is stated that the respondent No.5 had again visited Gandhinagar in the month of September-October, 2018, and in the parking of District Court, Gandhinagar, the respondent No.5 made a demand of Rs.1.00 lakh, and to corroborate the said fact, he has produced C.D. of video clip of the incident in question which shows that the meeting and presence of respondent No.5 with Sanjaybhai Patel. Learned advocate for the applicant submitted that about a period of five days, thereafter Sanjay Patel, on behalf of present applicant had paid Rs.40,000/- to the agent of respondent No.5 in the canteen of District Court, Gandhinagar.

3.5 Thereafter on 16.02.2019 the present applicant was arrested by respondent No.7 - Dinesh, Officer of DSP Squad and another constable in connection with the FIR being C.R. No. 1 - 57 of 2018 registered against the applicant with Mahesana Taluka Police Station on dated 05.04.2018 for the offences punishable Sections 354, 323, 427, 504, 506(2) and 114 of the Indian Penal Code and under Section 135 of the Gujarat Police Act.

3.6 Learned advocate for the applicant submitted that on the next day the respondents No. 5 and 7 had demanded Rs.50,000/- from the applicant for his release on bail. It is stated that after negotiation, an amount of Rs.30,000/- was finalised which was to be paid after the applicant was released on bail. It is stated that the applicant was granted bail on

17.02.2019 by the police and that was witnessed by one Krishnakant Kangde and another was Sanjay Patel. It is stated that as the demand of Rs.30,000/- has not been fulfilled, it is alleged that the respondents No. 5 and 7 have threatened to seize the applicant's vehicle - Accent Car bearing No. GJ - 01 - KL - 1306 in case of non-payment of Rs.30,000/-, and therefore, the applicant has filed this petition seeking protection and necessary action, inquiry and investigation against the respondents No.5 and 7.

4. It appears that the matrimonial dispute between Niyatiben and Deepakbhai has resulted into lodging of an FIR at Mahesana Taluka Police Station and Visnagar City Police Station. The present applicant was arrested in connection with an FIR being C.R. No. I - 57 of 2018 registered with Mahesana Taluka Police Station on dated 05.04.2018 for the offences punishable under Sections 354, 323, 427, 504, 506(2) and 114 of the Indian Penal Code and under Section 135 of the Gujarat Police Act. The allegations are made that, during the course of pendency of FIR, the respondents No. 5, 6 and 7 had demanded money from the applicant as an illegal gratification and the applicant had also negotiated the payment of Rs.30,000/- for his release on bail and now he fears that the police would seize his vehicle Accent Car bearing No. GJ - 01 - KL - 1306 in case of non-payment of Rs.30,000/-. The whole of the allegation is regarding the payment of bribe money.

5. Prevention of Corruption Act, 1988, has come into force on 9th September, 1988. It is an act to consolidate and amend the law relating to the prevention of corruption and for matters connected therewith. The ambit and scope of Prevention of

Corruption Act has been explained in the case of **M. Narayanan Nambiar v. State of Kerala [AIR 1963 SC 1116]**, which reads under:

“The preamble indicates that the Act was passed as it was expedient to make more effective provision for the prevention of bribery and corruption. The long title as well as the preamble indicate that the Act was passed to put down the said social evil i.e. bribery and corruption by public servant. It also aims to protect honest public servants from harassment by prescribing that the investigation against them could be made only by police officials of particular status and by making the sanction of the Government or other appropriate officer a pre-condition for their prosecution. As it is a socially useful measure conceived in public interest, it should be liberally construed so as to bring about the desired object i.e. to prevent corruption among public servants and to prevent harassment of the honest among them.”

6. The object sought to be achieved by the provisions of the Prevention of Corruption Act, 1988, was to make effective provision for the prevention of bribe and corruption rampant amongst the public servants. It is a social legislation defined to curb illegal activities of the public servants and is designed to be liberally constructed so as to advance its object. In order to consolidate and amend the laws relating to prevention of corruption and matters connected thereto, Prevention of Corruption Act, 1947, was enacted which was amended from time to time. In the year 1988 a new Act on the subject being

Act No. 49 of 1988 was enacted with the object of dealing with the circumstances, contingencies and shortcomings which were noticed in the working and implementation of 1947 Act. Corruption is the deadliest enemy of every free civilised society. The society has become a victim to the rampant corrupt practices of the public servants.

7. In the case of **State v. Bharat Chandra Roul [1995 Cri.L.J. 2417]**, the Hon'ble Supreme Court in para 7 has observed as under:

“The enactment of the Prevention of Corruption Act, 1947, coincided with the inset of the country's independence. Corruption as such has reached dangerous heights and dangerous potentialities. The word `corruption' has wide connotation and embraces almost all the spheres of our day to day life the world over. In a limited sense it connotes allowing decisions and actions of a person to be influenced not by rights or wrongs of a cause, but by the prospects of monetary gains or other selfish considerations. Avarice is a common frailty of mankind, and while Robert Walpole's observation that every man has a price, may be a little generalised, yet it cannot be gainsaid that it is not far from truth. Burke cautioned “Among a people generally corrupt, liberty cannot last long.”

8. Prevention of Corruption Act, 1988, has developed the mechanism for raising the grievance of corruption by public servants. The Anti Corruption Bureau are set up in the State under the Act where the aggrieved can move his application.

WWW.LIVELAW.IN

Section 19 of the Prevention of Corruption Act, 1988, lays down that no court shall take cognizance of an offence punishable under Sections 7, 11, 13 and 15 alleged to have been committed by a public servant unless such person has filed a complaint in the competent court about the alleged offences for which the public servant is sought to be prosecuted and the court has not dismissed the complaint under Section 203 of the Code of Criminal Procedure, 1973, (2 of 1974) and directed the complainant to obtain the sanction for prosecution against the public servant for further proceedings. Thus the amended Section 19 by way of proviso inserted by Act 16 of 2018 which has come into effect from 26.07.2018 gives recourse to the aggrieved to file a complaint in the competent court about the alleged offence of the public servant. The said proviso further explains that in case of request from a person other than a police officer or an officer of an investigation agency or other law enforcement authority, the appropriate Government or competent authority shall not accord sanction to prosecute a public servant without providing an opportunity of being heard to the concerned public servant. The relevant part of Section 19 is extracted hereinbelow:

“19. Previous sanction necessary for prosecution.

—(1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction 1 [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)]—

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

[Provided that no request can be made by a person other than a police officer or an officer of an investigation agency or other law enforcement authority, to the appropriate Government or competent authority, as the case may be, for the previous sanction of such Government or authority for taking cognizance by the court of any of the offences specified in this sub-section, unless -

(i) such person has filed a complaint in a competent court about the alleged offences for which the public servant is sought to be prosecuted; and

(ii) the court has not dismissed the complaint under section 203 of the Code of Criminal Procedure, 1973 (2 of 1974) and directed the complainant to obtain the sanction for prosecution against the public servant for further proceeding:

Provided further that in the case of request

WWW.LIVELAW.IN

from the person other than a police officer or an officer of an investigation agency or other law enforcement authority, the appropriate Government or competent authority shall not accord sanction to prosecute a public servant without providing an opportunity of being heard to the concerned public servant.

Provided also that the appropriate Government or any competent authority shall, after the receipt of the proposal requiring sanction for prosecution of a public servant under this subsection, endeavour to convey the decision on such proposal within a period of three months from the date of its receipt.

Provided also that in case where, for the purpose of grant of sanction for prosecution, legal consultation is required, such period may, for the reasons to be recorded in writing, be extended by a further period of one month.

Provided also that the Central Government may, for the purpose of sanction for prosecution of a public servant, prescribe such guidelines as it considers necessary.

xxx xxx xxx xxx xxx xxx xxx xxx”

9. In the case of **Subramaniam Swamy v. Manmohan Singh [(2012) 3 SCC 64]**, it was held that there is no restriction on a private citizen filing a private complaint against

a public servant. The Court is not barred from taking cognizance of offence by relying on incriminating material collected by private citizen. Private citizen's right to file complaint against public servant and to obtain sanction for prosecuting public servant flows from rule of rule.

10. The corruption at any level by any person of any magnitude is condemnable which cannot be ignored by the judicial officer. In the instant case the applicant still however feels aggrieved by the alleged act of demand of bribe by a public servant, the recourse is available with him to go before the Anti Corruption Bureau or before the Competent Special Court by filing a complaint under Prevention of Corruption Act, 1988, and get his grievance addressed under law.

11. In view of the observations made hereinabove, it is open for the applicant to go by the provisions of Prevention of Corruption Act, 1988, and therefore, this Court would only direct the applicant to file appropriate application before the appropriate authority.

12. With the aforesaid observations and directions, the petition is disposed of. Rule is discharged.

13. In view of disposal of main matter, Criminal Misc. Application No. 1 of 2019 in Special Criminal Application No. 3665 of 2019 does not survive; accordingly disposed of.