

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5747 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SHANTILAL JETHALAL SHAH

Versus

STATE OF GUJARAT

Appearance:

MR MUKESH R SHAH for Petitioner
MR MA BUKHARI, ADDL.PUBLIC PROSECUTOR for Respondent No. 1
MR BP MUNSHI for Respondent No. 2
SERVED for Respondent No. 3

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 31/03/97

ORAL JUDGEMENT

1. The learned Special Judge, Bharuch, by his order dated 22/10/96, while refusing to grant 'B' summary, has taken cognizance of section 191 (b) of Cr.P.C. r/with section 5 of the Prevention of Corruptions Act, 1988. The learned Judge has also directed for further investigation of the case in exercise of powers u/s

2. It is contended by the learned counsel that the learned Judge, once having taken cognizance, could not invoke the powers u/s 156(3) Cr.P.C. or u/s 173 (8), directing the further investigation. Mr.M.R.Shah, learned counsel place reliance on the decision of 1997 SCC (Cri.) 88 (Central Bureau of Investigation vs. Rajesh Gandhi). It is held in the said case that the Magistrate of his own cannot order further investigation after having taken cognizance of the offence.

3. Mr. B.P.Munshi, learned counsel for the respondent No.2 submits that, from the reading of the impugned order, it does not appear that, prior to giving direction for further investigation, the cognizance has been taken. He further submits that, in the matter of investigations, the accused has no say. He further relies on the decision of the apex Court reported in 1997 (1) CRIMES 58 (SC) (Randhir Singh Rana vs. The State being The Delhi Administration).

4. In my view, there is no substance in the contention raised by the learned counsel for the respondent No.2. A bare reading of the impugned order shows that the direction for further investigation has been given after taking the cognizance. The Supreme court case cited by the learned counsel is not attracted in the facts of the present case, as the petitioner has challenged the order with respect to further investigation after the cognizance is taken. The contention raised by the petitioner is squarely covered by the decision of the apex Court in Randhir Singh Rana's case (supra).

5. Mr M.R.Shah, learned counsel further submits that the learned Judge has committed an error in refusing the 'B' summary and taking cognizance without proper sanction either under the Prevention of Corruption Act or u/s 197 of the Cr.P.C. He submits that the petitioner was holding the office in the State Government prior to his retirement and as such, he is a public servant as per the amended definition. The petitioner cannot be permitted to raise this ground as the same has not been raised before the learned Judge.

6. In view of the aforesaid, this Criminal Misc. Application is allowed. The impugned order of the learned Special Judge, Bharuch dated 22/10/96, so far as it pertains to giving direction for further investigation is concerned, the same is quashed and set aside. It will

be open for the petitioner to raise the contention before the learned Special Judge with respect to the validity of the prosecution in absence of the sanction. Rule made absolute to the aforesaid extent.

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