

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 2989 of 1995

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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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?

JAYESHKUMAR KANTILAL PATEL

Versus

PUSHPENDRAPRASAD

Appearance:

MR BM GUPTA for Petitioner
NOTICE SERVED for Respondents No. 1 & 2
MR RK MISHRA for Respondent Nos. 3 & 4
MR HARIN P RAVAL for Respondents Nos. 5
MR SR DIVETIA APP for Respondent No.6-State

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 30/06/98

ORAL JUDGEMENT

Heard learned advocates Mr. B.M Gupta for the petitioner, Mr. R.K Mishra, for respondent nos. 3 & 4 Mr. H.P Raval for Respondent No. 5 and learned APP Mr.

Divetia for respondent No. 6-State. Respondents Nos. 1 & 2 though served have not appeared.

2. This application under Section 397 of the Code of Criminal Procedure has been preferred against the judgment and order passed by the learned Sessions Judge, Ahmedabad on 30th November, 1995 dismissing the complaint lodged by the petitioner.

3. It appears that the petitioner has been carrying on building construction business and had agreed to sell shop No. 19 in a commercial building known as Shreeji Towers to the respondents Nos. 1 & 2 for which part payment was also received by the complainant. However, the said respondents did not pay remainder of the sale price and demanded allotment of Shop No. 26 to which the petitioner did not agree. Feeling agitated, it is alleged that respondents Nos. 1 & 2 approached the petitioner and his father on 9-9-1996 manhandled the watchman and ransacked their office situated in the said building. A complaint in this respect was lodged with the Satellite Police Station on 10th September, 1995. It is alleged that inspite of complaint having been lodged on 10th September, 1995, no action has been taken against the said respondents. On 11th September, 1995, the said respondents armed with revolver approached the petitioner and his father and administered threats. Further, the said respondents accompanied by respondent nos. 4 and 5 went to the disputed premises, broke open the locks of shop no. 26 and forcibly took possession of the said shop. Petitioner further alleged that inspite of the complaint made against the respondent nos. 1 & 2, no action was taken against the said respondents on account of intervention of respondent No. 3, who is a highly placed police officer. It is contended that respondent Nos. 1 & 2 and Respondent No. 3 belong to the same State and the same community, and therefore, the respondent no. 3 has been interferring, with the result, respondent no. 4 has not been permitted to investigate the complaint made against the respondent nos. 1 & 2. It was, therefore, alleged that the respondents Nos. 1 & 2 had committed an offence under Section 383, 384, 451 and 458 of the Indian Penal Code. It was alleged that respondents Nos. 3 & 4 had committed an offence punishable under Section 161 of the Indian Penal Code and Section 13 of the Prevention of Corruption Act, 1988. It was further alleged that all the respondents have committed an offence punishable under Sections 506 and 147 of the Indian Penal Code. The above referred complaint was lodged before the learned Special Judge on 3rd November, 1995. Pursuant to the said complaint made

under Section 200 of the Code of Criminal Procedure, the learned Special Judge recorded a statement of the complainant. The matter was adjourned to 22nd November, 1995 for orders. On 22nd November, 1995, complainant made an application Exh. 5 requesting the Court to direct inquiry under Section 156 (3) of the Code of Criminal Procedure in respect of the complaint made by the petitioner, by directing Anti-Corruption Bureau to investigate into the matter. The learned Judge having heard the complainant, recorded a finding that no offence under the Prevention of Corruption Act was made out against the respondents Nos. 3 & 4. Further, it was observed that the sanction as envisaged under Section 19 of the Prevention of Corruption Act, 1988 and section 197 of the Code of Criminal Procedure also was not produced, and therefore also, the Court could not issue process against the respondents Nos. 3 & 4. The Court further observed that since it was unable to proceed further against the respondents Nos. 3 & 4 i.e., public servants, it could not proceed further against other respondents who were private citizens. The Court, therefore, proceeded further to dismiss the complaint. While dismissing the complaint, the Court observed that the complainant may approach appropriate forum against respondents for the offence committed under Indian Penal Code.

4. Mr. Gupta has submitted that the learned Special Judge has manifestly erred in dismissing the complaint lodged by the petitioner. He has submitted that the complaint lodged by the petitioner discloses facts which constitute offence under Indian Penal Code as well as under the Prevention of Corruption Act, 1988. The Court, therefore, was bound to issue process under Section 202 of the Code. He has submitted that the sanction as envisaged under Section 19 of the Prevention of Corruption Act, 1988 was not required to be presented alongwith the complaint or at the time of issuance of process. At the most, the accused could have taken the defence of want of proper sanction and the learned Judge could not have dismissed the complaint on the ground of non presentation of proper sanction. He has relied upon the judgements in the matters of -

(i) Dalpat Singh & Anr. vs. State of
Rajasthan; AIR 1969 SC 17;

(ii) Gurbachand Singh v. State,
AIR 1970 Delhi 102,

(iii) Dhaneshwar Narain Saxena v. The Delhi

(iv) Prabhudas Badaji Pandav v. Faridmiya
Husainmiya Kadri & Anr., 1991 (2) GLR 876;

(v) Emperor v. Khwaja Nazir Ahmad,
AIR 1954 PC 18.

5. Mr. Mishra has contended that no offence has been made out against respondents Nos. 3 & 4 and the learned Judge is right in dismissing the complaint lodged by the petitioner. Mr. Rawal has submitted that offence is alleged to have been committed on 9th September, 1995 and 11th September, 1995, however, the complaint in question was lodged as late as on 3rd November, 1995. Further, the complainant has not explained the delay in lodging the said complaint. He has also contended that the petitioner having presented the complaint before the learned Special Judge under Section 200 of the Code of Criminal Procedure and the learned Judge having taken cognizance by recording the statement of the complainant, the application Exh. 5 made on 22nd November, 1995 praying for investigation by Anti-Corruption Bureau under Section 156 (3) of the Code of Criminal Procedure was not maintainable. The learned Special Judge, therefore, could not have granted said application and the complaint lodged by the petitioner is therefore rightly dismissed.

6. I have perused the complaint lodged by the petitioner. Facts mentioned in the said complaint do not constitute any offence under the Prevention of Corruption Act, 1988 against the respondents Nos. 3 & 4. It is merely an assumption of the complainant that respondents nos. 1 & 2 belong to the same community as respondent No. 3 and that because they belong to the same community, the respondent no. 3 has interfered with the investigation and under his instructions, the respondent no. 4 has foreborne himself from investigating into the complaint lodged before him by the petitioner on 10th September, 1995. Except the assumption of the petitioner and the inference drawn by him, no other facts are mentioned in the complaint which would constitute offence under the Prevention of Corruption Act, 1988. In my view, therefore, the learned Special Judge is right in dismissing the complaint against the respondents No. 3 & 4. Since no offence has been made out against the respondent Nos. 3 & 4, the question of presentation of sanction would not arise and, I therefore, do not deal with the contention raised by Mr. Gupta in respect of necessity of presentation of sanction as envisaged under Section 19 of the Prevention of Corruption Act, 1988.

7. In so far as the other offences alleged to have been committed by respondents Nos. 1, 2, 4 and 5 are concerned, the learned Judge is right in holding that those having been alleged to have been committed under IP Code, the learned Special Judge had no jurisdiction to take cognisance of the same. In the circumstances, the learned Judge, as provided under Section 201 of the Code, ought to have returned the complaint to the complainant for presentation to the proper Court with an endorsement to that effect. Instead, however, the learned Judge has dismissed the complaint. I am of the view that the procedure adopted by the learned Judge in dismissing the entire complaint is erroneous and contrary to the provisions contained in Section 201 of the Code of Criminal Procedure.

8. This application is therefore partly allowed. The impugned order of the learned Special Judge in so far as it dismisses the complaint against the respondents Nos. 3 & 4 for commission of offence under the Prevention of Corruption Act, 1988 is confirmed. The order dismissing the complaint for the offence alleged to have been committed under Indian Penal Code is set-aside. The complaint is remanded to the learned Special Judge who should return the complaint to the complainant, as provided under Section 201 of the Code of Criminal Procedure. The learned Magistrate to whom the complaint may be presented shall proceed in accordance with law. Rule is made absolute to the aforesaid extent only. There shall be no order as to costs.

Prakash*