

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CRIMINAL REVISION APPLICATION No. 117 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

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, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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MUKUNDBHAI GOKALDAS SHAH - Applicant(s)
Versus
ASHABHAI SOMABHAI PATEL & 1 - Respondent(s)

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Appearance :

MR PM DAVE for Applicant(s) : 1,
MR BP DALAL for Respondent(s) : 1,
MR.H.L. JANI, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 28/02/2007

ORAL JUDGMENT

The petitioner-original complainant is before this Court being aggrieved by order passed by the learned 3rd Joint District Judge & Additional Sessions

Judge, Kheda, Camp at Anand in Criminal Revision Application No.26 of 2000 dated 29th December 2000.

The learned Additional Sessions Judge was pleased to allow the Criminal Revision Application in part and clarified that order dated 25.02.2000 passed by the learned Judicial Magistrate (First Class) below application, Exh.10 in Criminal Case No.1329 of 1997 and directed the learned JM(FC) to give an opportunity to the accused for representing his case and to take into consideration the documents produced by the accused and to pass order only after hearing both the parties and to issue a fresh order under sec.204 of the Code of Criminal Procedure.

2. In view of the settled position of law, the learned Additional Sessions Judge could not have passed the order in question. The order passed by the learned JM(FC) on 25.02.2000 was in accordance with law and at the time of issuance of that order the learned JM(FC) could not have given an opportunity of hearing to the accused.

At this juncture, it is required to be noted that the submission of Mr.B.P. Dalal, learned advocate for respondent no.1 is not without any substance. Even if he is right that the complaint is filed by the original complainant was time barred remedy is not which is resorted by respondent no.1 herein.

3. In view of the aforesaid facts order passed by the learned 3rd Joint District Judge & Additional Sessions Judge, Kheda, Camp at Anand in Criminal Revision Application No.26 of 2000 dated 29th December 2000 is hereby quashed and set aside. The matter is remanded to the learned Judicial Magistrate (First Class), Umreth to proceed with the matter in accordance with law.

Office is directed to return the Record & Proceedings forthwith to see that the proceedings are not delayed for non availability of the Record & Proceedings in the matter. The Record & Proceedings, in any case, should reach the Court of the learned JM(FC) not later than 07.03.2007. The parties are directed to remain present before the learned JM(FC), Umreth on 21.03.2007. The Criminal Revision Application is disposed of accordingly. Rule is made absolute.

(RAVI R. TRIPATHI, J.)

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