

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CRIMINAL APPLICATION No. 1641 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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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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JASHVANTLAL ISHWARLAL BAROT - Applicant(s)

Versus

DIST. SUPERINTENDENT OF POLICE & 7 - Respondent(s)

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Appearance :

MR BS BRAHMBHATT for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1 - 2.
NOTICE NOT RECD BACK for Respondent(s) : 3 - 8.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 28/09/2007

ORAL JUDGMENT

Heard Shri BS Brahmbhatt, learned advocate appearing on behalf of the petitioner, Shri KT Dave, Id. APP for respondent Nos.1 and 2 and Shri PK Jani,

learned advocate appearing on behalf of the respondent Nos.3 to 8.

2. By way of this petition under Article 226 of the Constitution of India, the petitioner, original informant, original complainant has prayed for an appropriate order to quash and set aside the order passed by the Id. JMFC, Kheralu in accepting the "C" summary report submitted by the Investigating Officer of complaint being M.Case No.15/07.

3. The petitioner herein, - original complainant filed a complaint against the respondent Nos.3 to 8 in the Court of Id. JMFC, Kheralu for the offence u/s 406, 420, 120-B and 114 of the IPC. The Id. JMFC passed an order directing the Police Inspector, Kheralu Police Station to hold inquiry u/s 156(3) of the Criminal Procedure Code. Thereafter, the complaint was sent to the Kheralu Police Station which was registered as M.Case No.15/07. That thereafter, the respondent Nos.3 to 8 herein, - original accused filed Criminal Misc. Application

No.4305 of 2007 before this Court under section 482 of Criminal Procedure Code to quash and set aside the aforesaid complaint. However, as the investigation was in progress, the learned advocate appearing on behalf of the original accused withdrew the said application. That thereafter, after the investigation is concluded, the Investigating Officer of Kheralu Police Station submitted "C" summary report before the Id. JMFC, Kheralu by its order dated 16-8-07 accepted the said "C" summary report. Being aggrieved by the order passed by the Id. JMFC, Kheralu dated 16-8-2007, the petitioner herein, - original complainant has preferred the present petition.

4. Shri Brahmhatt, learned advocate appearing on behalf of the petitioner has submitted that the impugned order passed by the Id. JMFC in accepting the "C" summary report is without any notice to the petitioner and without giving any opportunity of being heard to the petitioner is illegal and the same is against the principles of natural justice. He

has also further submitted that even on merits also, the Id. JMFC ought not to have accepted the “C” summary report as prima facie case is made out against the accused persons for the offence u/s 406, 420, 120-B and 114 of the IPC. Shri Brahmhatt has relied upon the decision of the Hon'ble Supreme Court in the case of **Bhagwant Singh V. Commissioner of Police and another reported in AIR 1985 SC 1285** in support of his above prayer.

5. Shri PK Jani, learned advocate appearing on behalf of the respondents accused has submitted that the petitioner is a busy body he is in habit of filing such application/complaint and considering the fact that the Id. Magistrate has accepted the “C” summary report by giving cogent reason, the same is not required to be interfered with by this Court in exercise of powers under Articles 226 and 227 of the Constitution of India. It is submitted that as no case is made out against the accused persons for the offence u/s 406, 420, 120-B and 114 of the

IPC, the Investigating Officer has rightly submitted "C" summary report and the same has been rightly accepted by the Id. JMFC. Under the circumstances, it is requested to dismiss the present petition.

6. Shri KT Dave, Id. APP has submitted that the order passed by the Id. JMFC accepting the "C" summary report without issuing notice to the petitioner, - original complainant is bad in law which is not tenable at law. He has also further submitted that the said controversy is covered by the Hon'ble Supreme Court in the case of Bhagwant Singh (supra).

7. Heard the learned advocates appearing on behalf of the parties.

8. At the outset, it is required to be noted that the petitioner is the complainant, - original informant and after investigation, the Investigating Officer submitted "C" summary report u/s 173(2) of Criminal Procedure Code. It is not in dispute that

the said "C" summary report has been accepted by the Id. Magistrate without giving any notice to the petitioner, - original complainant. As held by the Hon'ble Supreme Court in the case of Bhagwant Singh (supra), that in a case where the Magistrate to whom a report is forwarded under subsec. (2)(i) of S. 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report. It is also observed by the Hon'ble Supreme Court in the said decision that if the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceeding or takes the view that though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against others mentioned in the First Information Report, the informant would certainly be prejudiced

because the First Information Report lodged by him would have failed of its purpose, wholly or in part. It is also further observed by the Hon'ble Supreme Court that when the interest of the informant in prompt and effective action being taken on the First Information Report lodged by him is clearly recognised by the provisions contained in sub-sec. (2) of S. 154, sub-sec. (2) of S. 157 and sub-sec. (2) (ii) of Section .173, in that case the officer of the police station is required under sub-sec. (2) of S. 157 to notify to the informant the fact that he is not going to investigate the case or cause it to be investigated and under sub-sec. (2)(ii) of S. 173, the said officer to communicate the action taken by him to the informant and the report forwarded by him to the Magistrate, it must be presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process, because that would be culmination of the First Information Report lodged by him. It is also further observed that therefore, there can be no doubt that when, on a

consideration of the report made by the officer in charge of a police station under sub-section (2)(i) of S. 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. Thus, considering the decisions of the Hon'ble Supreme Court in the case of Bhagwant Singh (supra), the order passed by the Id. Magistrate, Kheralu dated 16-8-2007 accepting the "C" summary report submitted by the Investigating Officer without notice to the petitioner herein and without giving opportunity to the petitioner is bad in law and is required to be quashed and set aside and the matter is to be remanded to the Id. JMFC, Kheralu for considering the "C" summary report after giving an opportunity to the petitioner herein. In view of the above, this Court is not further considering the submission on behalf of the petitioner on merits and his contention that there is a case made out against

the accused persons for the offence alleged in the FIR.

9. For the reasons stated above, the petition succeeds in part. The order passed by the Id. JMFC, Kheralu dated 16-8-2007 in accepting the "C" summary report submitted by the Investigating Officer of complaint being M.Case No.15/07 is hereby quashed and set aside and the matter is remanded to the Id. JMFC, Kheralu to consider the aforesaid "C" summary report afresh in accordance with law and on its own merits after issuing the notice to the petitioner herein and after giving an opportunity to the petitioner to submit his objection to the "C" summary report. It will be open for the petitioner to submit his objection against the "C" summary report and the same shall be considered by the learned trial Court in accordance with law and on its own merits. Rule made absolute.

(M.R. Shah, J.)

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