

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CRIMINAL MISC.APPLICATION No. 9747 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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SANJAY DHANJIBHAI VALA - Applicant(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR MP SHAH for Applicant(s) : 1, MS. KRUTI M SHAH for Applicant(s) :
1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
DS AFF.NOT FILED (N) for Respondent(s) : 2,
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 31/08/2007

ORAL JUDGMENT

Heard Ms Kruti Shah, learned advocate appearing
on behalf of the applicant and Shri KT Dave, ld. APP
on behalf of the State.

2. By way of this application u/s 482 of Criminal Procedure Code, the petitioner, - original accused has prayed for an appropriate order to quash and set aside the FIR being C.R. No. I 158/07 registered at Jetpur city Police Station, Jetpur, Rajkot on 17-8-07.

3. The complaint/FIR is lodged with the Jetpur Police Station by the complainant ASI of Jetpur Police Station being C.R. No. I 158/07 on 17-8-07 against the petitioner for the offence u/s 186 of the IPC for the offence alleged to happen on 14-8-07.

4. It is alleged in the complaint that on 14-8-07, the complainant ASI of Jetpur city Police Station was in the police station along with other police personnels at about 21:30, he was recording the complaint of one Hansaben, - the complainant of FIR being C.R. No. II 7202/07 for the offence u/s 504, 506(2) and 114 of the IPC and also u/s 3(1)(10) Prevention of Scheduled Caste and Scheduled Tribe (Atrocities) Act, at that point of time the petitioner rushed into the police station along with photo camera and started making inquiries with Hansaben though he was not authorized in law to make any inquiries and started taking photograph of interior part of the police station as well as station diary. It is further alleged in the complaint that he also gave unnecessary encouragement to Hansaben and tried to instigate her to say that the police is not

recording her FIR. The police took the petitioner and other persons accompanying him out of the police station and thus, it is alleged that the petitioner has committed the offence u/s 186 of the IPC. Being aggrieved by the same, the petitioner has preferred the present application u/s 482 of Criminal Procedure Code to quash and set aside the impugned FIR.

5. Ms Shah, learned advocate appearing on behalf of the applicant has submitted that the petitioner is a photographer in the newspaper and the newspaper has been started from 2003 and are putting trust on correct information before the general public. Here, the Police Inspector of Jetpur Police Station MR. KS Bharai was deputed in Jetpur city some where in the year 2002-03 for a period of approximately one year and during his tenure in Jetpur, several incidents had occurred involving him as accused and the petitioner's newspaper agency had published the said incident without any fear and the said incidents are pertaining to the death of two Dalit boys who had alleged to have consumed poisonous drugs. It is submitted that therefore, deliberately false complaint had been lodged against the petitioner. It is submitted that Police Inspector Bharai is known for committing illegal acts by taking advantage of his position and is also known for exercising 3rd degree torture upon the innocent people. It is submitted that for the offence alleged to have been happened on 14-8-07, the impugned complaint has been filed after a period of three days i.e. on 17-8-07.

It is submitted that if the allegations in the complaint are true, in that case, the complaint must have been filed on the very day i.e. on 14-8-07, more particularly, when the place of incident and/or commission of offence is Jetpur police station itself. The fact that the impugned complaint has been filed after a period of three days that itself suggestive that the impugned FIR is filed only with a view to harass the petitioner and therefore, it is requested to quash and set aside the impugned FIR as it is nothing but an abuse of process of the Court.

6. Shri KT Dave, ld. APP is not in a position to satisfy the Court whether the commission of any offence, more particularly, offence u/s 186 of the IPC by the petitioner. He is also not in a position to explain the delay of three days in filing the impugned complaint, more particularly, when the place of commission of offence is alleged to be the Jetpur Police station itself.

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

8. It is to be noted that as per the allegation in the FIR, the alleged place of offence is Jetpur Police station and as per the FIR, the incident and/or the offence has taken place on 14-8-07. Now considering the FIR, the impugned FIR has been filed on 17-8-07 i.e. after a period of three days. Now, if the alleged place of offence is the Police station

itself and such an incident had taken place, in that case, the FIR must have been and/or ought to have been filed and/or registered on the very day i.e. on 14-8-07 itself. Now, when the impugned FIR is filed after a period of three days though the alleged incident has taken place in the police station itself, that itself is suggestive that no such incident had taken place and the allegations of mala fides and the harassment by the concerned Police Inspector have substance. It appears to the Court that the concerned Police Inspector of Jetpur police station has misused his position. Even, there are allegations in the complaint that there are so many other complaints filed against the said Police Inspector of harassment and other cognizable offence which are pending before the Court. Now considering the above, to continue the criminal proceedings against the petitioner by way of impugned FIR would be nothing but an abuse of process of Court and the position by the concerned Police Inspector and/or the original complainant and unnecessary harassment to the petitioner and under the circumstances, the impugned FIR requires to be quashed and set aside in exercise of powers u/s 482 of Criminal Procedure Code. In the facts and circumstances of the case, it appears to the Court that this is a fit case to exercise powers u/s 482 of Criminal Procedure Code.

9. For the reasons stated above, the petition succeeds. The complaint being C.R. No. I 158/07 registered at Jetpur city Police Station, Jetpur,

Rajkot is hereby quashed and set aside. Rule made absolute.

(M.R. Shah, J.)

shekhar/-