

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****SPECIAL CRIMINAL APPLICATION (DIRECTION - TO LODGE  
FIR/COMPLAINT) NO. 1761 of 2014****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE R.M.CHHAYA**

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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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GOVINDBHAI KALABHAI HARIJAN....Applicant(s)

Versus

STATE OF GUJARAT & 4....Respondent(s)

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Appearance:

MR NK MAJMUDAR, ADVOCATE for the Applicant(s) No. 1

MS HANSA PUNANI, APP for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE R.M.CHHAYA**

**Date : 31/07/2014**

**ORAL JUDGMENT**

1. Heard learned counsel for the respective parties.
2. **Rule.** Learned Additional Public Prosecutor waives service of Rule on behalf of the respondents-State.

3. Considering the issue involved in the present petition and with consent of learned counsel appearing for the respective parties, this petition is taken up for final disposal forthwith.

4. Learned counsel for the petitioner restricts this petition only to the alternative prayer prayed for in Prayer-10(ii) in the petition and request that at least this Court may direct the respondent authorities to examine the representation dated 17.01.2014 addressed to D.S.P, Kheda (Page No.13 of the petition).

5. Learned counsel for the petitioner has further submitted that though the representation filed before the respondents authorities, no action is being taken yet. Learned counsel for the petitioner, however, relied upon the recent judgment passed by the Apex Court in Criminal Appeal No.55 of 2014, wherein the Apex Court has referred the Constitutional Bench judgment in the case of **Lalita Kumari Vs. Government of U.P., 2014(2) SCC 1**, wherein it has been observed thus:“

(i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

(ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

(iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

(iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

(v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals

any cognizable offence.

(vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

- (a) Matrimonial disputes/family disputes
- (b) Commercial offences
- (c) Medical negligence cases
- (d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay. The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

(vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

(viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above."

6. Considering the aforesaid judgment of the Apex Court, respondent No.4-D.S.P, Kheda, before whom the representation dated 17.01.2014 is filed, is hereby directed to decide the said representation as expeditiously as possible but not later than 14 days from the date of receipt of this order on its own merits and in accordance with law. It is, however, clarified that this Court has not expressed any opinion on the complaint as well as the representations filed by the petitioner.

7. With these observations, present petition stands **disposed of**. Rule is made absolute only to the aforesaid extent. Direct service is permitted.

**(R.M.CHHAYA, J.)**

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