

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CRIMINAL APPLICATION NO. 1467 of 2019

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DUSHYANT MAHESHBHAI BAROT
Versus
STATE OF GUJARAT

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Appearance:

MR.MRUDUL M BAROT(3750) for the Applicant(s) No. 1
for the Respondent(s) No. 2,3
PUBLIC PROSECUTOR(2) for the Respondent(s) No. 1

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CORAM: HONOURABLE MS JUSTICE SONIA GOKANI

Date : 29/03/2019

ORAL ORDER

1. The petitioner is aggrieved by non-registration of the first information report on the basis of the complaint given in writing.
2. It is his say that though cognizable offence is made out, his first information report is not being registered. Both the sides have been heard. This Court has also taken into consideration the judgment of the Apex Court in the case of “LALITA KUMARI V. STATE OF UTTAR PRADESH AND OTHERS”, reported in (2014) 2 SCC 1. It would be beneficial to regurgitate the relevant paragraph of the said decision, which reads as under :

“120. In view of the aforesaid discussion, we hold:

(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."

3. Bearing in mind the aforementioned ratio laid down by the Apex Court, the respondent No.2 herein, shall look into the matter and lodge

the first information report, if any, cognizable offence is made out; if not, for the limited purpose of knowing as to whether cognizable offence is revealed, a preliminary inquiry shall be conducted. The petitioner shall be communicated the brief reasons if eventually also, the respondent No.2 chooses not to lodge the first information report. Such exercise shall be completed by the respondent No.2 at the earliest, but not later than Eight weeks. The entire exercise shall be done at the earliest without further loss of time.

4. The petition stands DISPOSED OF accordingly.

Direct Service is permitted.

SUYASH

(MS.SONIA GOKANI, J)