IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 8070 of 2020

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UDAJI ATMARAM BARAIYA

Versus

STATE OF GUJARAT

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Appearance:
MR DR RAY(6148) for the Applicant(s) No. 1
for the Respondent(s) No. 2
MS MOXA THAKKAR, APP (2) for the Respondent(s) No. 1
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CORAM: **HONOURABLE DR. JUSTICE A. P. THAKER**

Date : 24/12/2020

ORAL ORDER

[1] Heard Mr.D.R.Ray, learned advocate for the applicant and Ms.Moxa Thakker, learned APP for the respondents through video conferencing.

[2] The present petition is filed by the petitioner for the following reliefs:-

> *(A) admit this petition;*
>
> *(B) Allow present Petition and direct to the respondents police authority to register the complains against the responsible accused persons, on the basis of the complaint given by the petitioner in writing on 30-09-2020 to the Ramol Police Station, at Ramol Ahmedabad for the alleged offence punishable under section Indian Penal Code, 1860 in the interest of justice and equity.*
>
> *(C) Grant such other and further relief(s) as may be deemed fit, just and proper in the facts and circumstances of the case, in the interest of justice.*

[3] Mr.D.R.Ray, learned advocate for the petitioner has vehemently submitted that considering the averments made in the petition as well as documentary evidence, necessary directions be issued to the concerned authority for registration of

the FIR. He has prayed to pass necessary orders in this matter.

[4] Mr.Ray, learned advocate for the petitioner has relied upon the following decisions.

(1) *Girishbhai Kantibhai Patel Vs. State of Gujarat, Special Criminal Application No.2424 of 2020 dated 26.10.2020;*

(2) *Lalita Kumari Vs. Government of Uttar Pradesh, (2014) 2 SCC 1;*

(3) *State of Telangana Vs. Habib Abdullah Jeelani, (2017) 2 SCC 779;*

(4) *Arvindbhai Chimanbhai Patel s/o. Jamnaben Chimanbhai Patel Vs. State of Gujarat and others, Special Criminal Application No.5089 of 2015 dated 04.12.2015;*

(5) *Gauriben Revabhai Surya Vs. State of Gujarat, Special Criminal Application No.944 of 2016 dated 12.02.2016;*

(6) *Maheshkumar Babulal Rami Vs. State of Gujarat and others, Special Criminal Application No.1016 of 2016 dated 15.02.2016;*

(7) *Rameshbhai Devshibhai Bhimani Vs. State of Gujarat, Special Criminal Application No.932 of 2016 dated 15.02.2016;*

(8) *Mahesh Jethabhai Makwana thro' Dahyiben Jethabhai Makwana Vs. State of Gujarat, Special Criminal Application No.10045 of 2016 dated 16.02.2017;*

(9) *Navinkumar Hargovindbhai Patel Vs. State of Gujarat, Special Criminal Application No.4749 of 2017 dated 08.08.2017;*

[5] Ms.Moxa Thakker, learned APP for the respondent has opposed the present petition and urged to dismiss the petition.

[6] The present petition is filed on the ground that the petitioner has filed an application on 30-09-2020 regarding serious offences committed by the named persons in the said

application. It is also revealed from the materials that the subject matter is that the accused have fabricated order of District Inspector of Land Records Office, Ahmedabad as Order No.DSO/DRK/Pu.Pa./Du.Pa./36/13-14 dated 20.8.2014 with respect to the Revenue Block No.1452 of mouje Village-Kathua, Taluka-Dascroi and produced it before the office of Mamlatdar, Ahmedabad and committed cognizable offence.

[7] Now, the law is settled by the Hon'ble Supreme Court in the case of ***Lalita Kumari Vs. Government of Uttar Pradesh and others***, ***(2014) 2 SCC 1*** wherein the Apex Court has observed in paras-120 to 121 as under:-

> *"120. In view of the aforesaid discussion, we hold:*
>
> *120.1 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;*
>
> *120.2 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.*
>
> *120.3 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.*
>
> *120.4 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.*
>
> *120.5 The scope of preliminary inqjiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.*
>
> *120.6 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 intiating 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.

120.7 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.

120.8 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.

121. With the above directions, we dispose of the reference made to us. List all the matters before the appropriate Bench for disposal on merits."

[8] Considering the aforesaid pronouncement of the Apex Court, this Court is of the considered opinion that the some sort of direction is required to be issued to the police authority for making inquiry of the application.

[9] In that view of the matter, the respondent police authority is directed to look into the application dated 30.09.2020 filed by the petitioner in accordance with law and if the cognizable offence is made out during the course of inquiry, then, the same be registered as FIR and necessary investigation may be carried

out thereof within a period of four months from today. At the same time, if during the course of inquiry, no cognizable offence is made out, then, the police authority shall inform in writing to the petitioners accordingly so that petitioners may take appropriate recourse in accordance with law.

[10] It is needless to say that this Court has not opined about commission of alleged offences and, therefore, it would be open for the suspects or those persons, who may be made an accused in the FIR, to file an application under Section 438 or Section 439 of the Code of Criminal Procedure Code or to file appropriate proceedings before appropriate Court including an application under Section 482 of the Code of Criminal Procedure and/or any petition under Article 226 of the Constitution of India.

[11] With these observations, the present petition stands disposed of accordingly. The Registry is directed to communicate this order by fax, e-mail and/or any other electronic mode to the concerned Court / Police Authority. Direct service is permitted by email / fax.

[12] The concerned police authority be informed accordingly.

(DR. A. P. THAKER, J)

RS MALEK/ VARSHA DESAI