

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION (DIRECTION) NO. 1321 of 2024**

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PRADEEP NIRANKARNATH SHARMA

Versus

STATE OF GUJARAT

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Appearance:

MR RJ GOSWAMI(1102) for the Applicant(s) No. 1

for the Respondent(s) No. 2,3

MR MITESH AMIN, ADDL. ADVOCATE GENERAL assisted by MR MANAN MEHTA, ADDL.
PUBLIC PROSECUTOR for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**Date : 31/01/2024****ORAL ORDER**

[1.0] RULE returnable forthwith. Learned APP waives service of notice of Rule on behalf of respondent No.1 – State of Gujarat. With the consent of learned advocates appearing for the respective parties, present petition is taken up for final hearing today.

[2.0] By way of present petition under Articles 14, 20, 21, 22 and 226 of the Constitution of India the petitioner has prayed for the following relief:

“(B) To issue a Writ of Mandamus or any other appropriate Writ, order or direction directing the respondent authorities to conduct a preliminary inquiry in connection with any orders passed by the petitioner pertaining to the allotment of land, etc. while working as Collector or on any other post before registration of FIR and before that, a reasonable time be given to the petitioner to give

his explanation during the preliminary inquiry;

[3.0] Heard learned advocate appearing for the petitioner and learned Additional Advocate General assisted by learned APP for the respondent No.1 – State of Gujarat.

[4.0] Learned advocate for the petitioner has submitted that the petitioner is a retired IAS Officer and when earlier the petitioner was posted as Collector, District Kachchh, the State Authority have registered the FIR against the petitioner pertaining to the order passed by the petitioner as the Collector, Bhuj in his official capacity and thereafter, one after another multiple FIRs came to be registered and in all cases, except one, the petitioner remained in jail for a period of nearly 5 years and in connection with all the cases, trial is going on in different Courts. Further, the petitioner has superannuated in the year 2015. The petitioner has approached this Court seeking protection of his right to liberty against registration of several FIRs without preliminary inquiry accusing him for the acts done while he was acting or purporting to act in discharge of his official duty mostly as a Collector in District Kachchh between 2003 to 2006 and from 2010, the State Authority has started to register the offences including successive offences being registered after the release of the petitioner on bail by the Courts followed by his immediate arrest based on freshly registered succeeding complaint. 11 various complaints are registered one after another by the State Authority without following any preliminary inquiry and due process only with a view to harass the present petitioner with ulterior motive. Hence, the petitioner has requested to direct the respondent Authority to conduct preliminary inquiry in

connection with any order passed by the petitioner pertaining to allotment of land while he was working as a Collector or on any other post before registration of FIR and further before that, to grant reasonable time to the petitioner to give his explanation during the preliminary inquiry. Learned advocate for the petitioner in support of his submission has relied on the decision of the Hon'ble Apex Court in the case of **Lalita Kumari vs. Government of Uttar Pradesh & Ors.** reported in **(2014)2 SCC 1** and stated that prior to registration of complaint, respondent Authority is directed initiate preliminary inquiry and after conducting the preliminary inquiry and after giving opportunity of explanation, respondent Authority be directed to register the complaint. Hence, he has requested to allow the present petition.

[5.0] Learned Additional Advocate General has vehemently opposed the present petition and stated that the petition itself is not maintainable as the petitioner has sought the relief to issue writ of mandamus which is against the settled provisions of law and that too in absence of any provision of law. Further, the petition is misconceived and petitioner wants to obtain a blanket order and that too against the law and settled provision of law. Further, if the petitioner is granted the relief sought for by him then the same would amount to breach of dictum of the Hon'ble Apex Court in the case of **Lalita Kumari (Supra)** as once the cognizable offence is registered then police authority is duty bound to register the complaint. Hence, he has requested to dismiss the present petition.

[6.0] I have given thoughtful consideration to the arguments canvassed by the learned Advocate for the petitioner and

learned PP for the State. The petitioner has sought the relief to direct the respondent Authorities to conduct preliminary inquiry in connection with any order passed by the petitioner pertaining to allotment of land while he was working as Collector or on any other post before the registration of FIR and to give an opportunity of explanation during the preliminary inquiry. The petitioner, who is a retired IAS Officer, has requested to direct the respondent Authorities to give him an opportunity to offer explanation in preliminary inquiry in connection with any offence that has been registered for the acts done by him in his official capacity during his service tenure as regards the allotment of land.

[6.1] It is needless to say that once a cognizable offence is disclosed, then it is the duty of the police to register the FIR. In connection with a cognizable offence, if the FIR is not registered then it amounts to violation of the dictum of the Hon'ble Supreme Court in the case of **Lalita Kumari (Supra)**. The Hon'ble Supreme Court while concluding the judgment in the case of **Lalita Kumari (Supra)**, has observed in paragraph 120 as under:

*"120. In view of the aforesaid discussion, we hold:
120.1. The 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 inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence."

[6.2] Considering the aforesaid fact and the rights of accused and the complainant are already protected by the legislature, the preliminary inquiry should be made in the time bound schedule but regarding the registration or non-registration of the FIR while various counter claims being made and if there is a doubt on the part of the police authority as to whether any cognizable offence is committed or not, in such situation registration of FIR is mandatory or not then police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed or not. But, if the information given clearly mentions the commission of a cognizable offence, then the police authority is left with no other option but to register an FIR forthwith.

[6.3] Keeping in mind the aforesaid fact, if any blanket order is

passed as sought for by the petitioner then the same would amount to violation of the dictum of the Hon'ble Supreme Court in the case of **Lalita Kumari (Supra)** as well as in the Code of Criminal Procedure also there is no provision to give an opportunity of offering explanation to the accused before conducting preliminary inquiry before registration of FIR when the complaint discloses commission of cognizable offence. Section 2(g) of the Code of Criminal Procedure, 1973 defines the word "inquiry", which means every inquiry, other than a trial by a Magistrate or a Court, there is no express provision to initiate any preliminary inquiry or any provision to give an opportunity of being heard to the accused prior to registration of any complaint under the Code of Criminal Procedure.

[6.4] In such circumstances, in absence of any statutory provision, Court cannot enlarge the scope of legislation or the intention of legislature when the language of the provision is plain and unambiguous. It is well settled principle of law that, the Court cannot rewrite, recast or re-frame the legislation for the very good reason that it has no power to legislate and statute is required to be read as it is. The Court cannot add word to a statute or read words into which are not there. In this regard reference is required to be made to the decision of the Hon'ble Supreme Court in the case of **Union of India and Another vs. Deoki Nandan Aggarwal** reported in **1992 Supp (1) SCC 323** and **Saregama India Limited vs. Next Radio Limited and Others** reported in **(2022)1 SCC 701** wherein it has been held by the Hon'ble Apex Court that, an exercise of judicial rewriting of a statutory rule is unwarranted in the exercise of of the jurisdiction under Article 226 of the Constitution and such exercise is

impermissible. Hence, the Court cannot add, alter or substitute the word “inquiry” as “preliminary inquiry”.

[6.5] In view of above, in absence of any such statutory provision or Rule, such blanket order cannot be granted in favor of the present petitioner. Even, in the case of **Lalita Kumari (Supra)**, the scope of preliminary inquiry is not for the purpose of verifying the veracity or otherwise of the information received but with a view only to ascertain whether information reveals commission of cognizable offence or not? The inquiry is for the limited purpose. Considering the aforesaid fact, the Code of Criminal Procedure has provided sufficient safeguards and right of accused is also recognized right from investigation to trial including against the arrest and alternate remedies are also available to accused bail etc. including right to know about the reason for arrest. Even, if any complaint or offence is registered against the present petitioner, in that event also, the petitioner / accused has a right to take appropriate recourse and remedy under the law as so advised.

[7.0] In view of the above, the relief sought for by the present petitioner is *omni* directional and in absence of any statutory provision and merely based on apprehension, no such prayer can be allowed. Hence, present petition is dismissed. Rule is hereby discharged.

(HASMUKH D. SUTHAR, J.)

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