

(2000) 09 GUJ CK 0113
In the Gujarat High Court

Case No : Criminal Revision Application No. 531 of 1988

Aher Pola Parbat Barad

APPELLANT

Vs

Chituri Sahib, Asstt. S.P., Veraval and Others

RESPONDENT

Date of Decision : 07-09-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197(1), 202, 397, 401, 45
Penal Code, 1860 (IPC) — Section 114, 323, 325, 327, 330

Citation : (2001) 21 GLH 222 : (2001) 3 GLR 2054 : (2002) 4 RCR(Criminal) 11

Hon'ble Judges : R.M. Doshit, J

Bench : Single Bench

Advocate : Harin P. Raval, for the Appellant; S.T. Mehta, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Doshit, J.—This revision, u/s 397 read with Section 401 Cr. P. C., has been preferred by the complainant in Criminal Case No. 304 of 1986. It was the case of the complainant that in the night of 28th November, 1985 i.e., in the wee hours of 29th November, 1985 while going home, he passed by the house of one Karsan Punja where wife of the said Karsan Punja - Bai Dahi was shouting for help and ran out of the house. She told the complainant that her husband, her mother-in-law and her sister-in-law were trying to kill her by hanging. Thereupon, the complainant accompanied Bai Dahi to her parents. However, after two days, the accused Police Officers summoned the complainant and his brother Laxman to Panchayat Office. Since Laxman was not at home, the complainant went alone where he was forced to admit offence, pursuant to the complaint being C.R No. 119 of 1985 lodged by Bai Dahi. Since the complainant refused to do so, he was badly manhandled and brutally beaten. He was taken to his home and was forced to strangulate his brother Laxman. Laxman also was badly beaten. Both were taken to the Police Station at Maliya Hatina and were kept in lock up until morning from where, they were taken to Gadu Rest House and kept there till afternoon. Thereafter, they were permitted to go on condition that they

should not lodge a police complaint nor should they take medical treatment. But, Laxman started vomiting blood, and therefore, the next day both the brothers were admitted to hospital at Junagadh. Even in the hospital, the accused Police Officer took the thumb impression of the complainant under coercion. The accused were, therefore, alleged to have committed offence under Sees. 341, 342, 346, 347, 348, 323, 325, 327, 330, 331, 388, 489, 504, 506(2) and 114 I.P.C. The complaint was received by the learned Judicial Magistrate, First Class, Veraval u/s 202 Cr. P.C. and a Court inquiry was directed. The accused No. 1 made an application Exh. 3 and submitted that the accused were Police Officers and were assigned investigation in respect of the complaint lodged by Bai Dahi being C.R. No. 119 of 1985. The complainant and his brother Laxman were interrogated in respect of the investigation in C.R. No. 119 of 1985. Any act alleged to have been committed by the accused was in discharge of their duty. No prosecution, therefore, could have been lodged against them without obtaining prior sanction of the Government as envisaged u/s 45 and 197(1) Cr. P. C. After hearing the parties, the learned Magistrate held that the alleged act of atrocity was committed by the accused Police Officers in course of investigation in respect of C.R. No. 119 of 1985 i.e., in course of discharge of their duty. No cognizance of the offence, therefore, could be taken against the accused persons without the previous sanction. In absence of the previous sanction, as envisaged u/s 197(1) Cr. P. C., the complaint was not maintainable. Feeling aggrieved, the complainant has preferred the present revision.

2. It is contended that no Police Officer is supposed to commit atrocity either on the accused or on the witness while investigating a crime. The acts of atrocity, therefore, cannot be said to have been committed in discharge of official duty and no previous sanction, as envisaged u/s 197(1) Cr. P. C. was, therefore, required. I am afraid, I am unable to accept this argument. It is categorically held that the respondent accused were entrusted investigation in respect of C.R. No. 119 of 1985 and it was in connection with the said investigation that the complainant and his brother Laxman were summoned for interrogation. If, in course of investigation, the Police Officers resort to atrocity, the same may amount to an offence, however, it cannot be said that the offence has not been committed in discharge of official duty. If such were the interpretation, Section 197(1) Cr. P. C. would become nugatory. The learned Magistrate, therefore, was right in holding that the complaint against the accused was not maintainable except without the previous sanction as envisaged u/s 197(1) Cr. P. C.

3. In view of above discussion, the revision application is dismissed. Rule is discharged.

4. Application dismissed.