

(2011) 07 GUJ CK 0114
In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 1692 of 2011

B.H. Somani - Registrar

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 11-07-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 156(3), 202, 311, 482
Penal Code, 1860 (IPC) — Section 193, 194, 195, 196, 199

Citation : (2011) 07 GUJ CK 0114

Hon'ble Judges : Mukesh R. Shah, J

Bench : Single Bench

Advocate : Shalin N. Mehta, for the Appellant; J.M. Panchal, Special Public Prosecutor for Respondents 1 and Bhargav Bhatt Advocate for Ankur Y. Oza, for Respondents 2, for the Respondent

Final Decision : Dismissed

Judgement

M.R. Shah, J.

1.0. Present Criminal Miscellaneous Application u/s 482 of the Code of Criminal Procedure has been preferred by the Petitioner-Registrar City Civil & Sessions Court (Designated Court), Ahmedabad to quash and set aside the impugned order passed by the learned Metropolitan Magistrate Court No. 13, Ahmedabad dated 10.1.2011 passed below application Exh.1 in as Inquiry Case No. 2 of 2011 by which the learned Magistrate has passed an order to send the said complaint for police inquiry/investigation to Assistant Police Commissioner, Navrangpura u/s 156(3) of the Criminal Procedure Code.

2.0. The facts leading to the present Criminal Miscellaneous Application are as under:

2.1. That one Sessions Case No. 203 of 2009 is pending before the learned Special Designated Court -Additional Sessions Court No. 5, Ahmedabad against number of accused persons for the offences which attracted capital punishment

or imprisonment for life or for seven years or upwards. That the aforesaid Criminal Case is popularly known as "Naroda Patiya Case". That the aforesaid trial pertains to riot which took place after the Godhra Carnage, which occurred in the year 2002. That during the aforesaid trial, Respondent No. 2 herein one Raiskhan Azizkhan Pathan submitted the application Exh.596 before the learned Designated Court u/s 311 of the Code of Criminal Procedure to examine him as Court/prosecution witness.. That in the said application said Rahishkan Pathan stated as under:

2.2. I was working as a field Coordinator with Citizen for Justice and Peace, hereinafter called CJP, a Mumbai based NGO headed by Ms. Teesta Setalvad, from 28.02.2002 till 18.01.2008. I was stationed at Ahmedabad.

2.3. I as a field Coordinator of CJP was getting instructions from Teesta Setalvad over phone, e-mails on day to day basis to contact various victims/witnesses of riot cases spread in various parts of Gujarat and I use to travel other states also for meeting them who have shifted to other states and to pursue them to join hands with CJP to file cases in the Courts.

2.4. I was overall in charge of the entire operation of CJP and on the instructions from Ms. Setalvad I use to organise press conference of riots victims, seminars in various cities and to call them to meet Ms. Setalvad and also paying them traveling expenses etc. on behalf of CJP.

2.5. In recent media reports published in August, September and October 2010, I came to know that various victims/witnesses during their cross examinations in the trial courts have denied that they "ever seen or said anything" which is mentioned in their affidavits, prepared and filed in the court through CJP. Later, these victims/witnesses have accused me of manipulating/inserting extra paragraphs in their original affidavits which were filed through me. Copy of such report published on 24th August, 2010 in a leading newspaper "Divya Bhaskar, Ahmedabad" is annexed herewith wherein, Nanumiya Rasulmiya Malik and Madina Banu main witness of Naroda gam case, during deposition, disowned certain part of affidavit submitted before the Supreme Court. In the affidavits submitted before Supreme Court Nanumiya and Madina Banu had stated that "Madina was raped during the massacre" but she denied this in her statement before the SIT as well as in the Trial Court too. Nanumiya claimed that I deliberately and without his knowledge added these paragraphs in his affidavit which is not true.

2.6. According to news report published in The Indian Express, Ahmedabad on 16.10.2010 another witness of 2002 Naroda Gam massacre Shri Imran Pathan has also disowns his affidavit before the Special Fast Track Court of Additional Sessions Judge, Ahmedabad. He told the court that he did not see any rape or murder in front of him in massacre occurred on 28th February, 2002, however, in his affidavit to SC he stated that he saw a number of murders and rapes in Naroda Gam by rioting mob. Copy of Indian Express dated 16th October, 2010 is

annexed herewith.

2.7. I correctly remember that the final affidavits of Shri Imran Pathan, Rafiq Malik, Madina Pathan and Nanumiya Malik were sent to me around evening by Ms. Teesta in my one of the above mentioned e-mails accounts and all these four affidavits were got signed and notarized same day late evening in my presence and I handed over the original affidavits to Mr. Sohail Tirmizi Advocate same evening. I still remember that Imran Patan and Rafiq Malik insisted for the copy of their affidavits but the same was not given to them on the instructions of Ms. Teesta. They were very annoyed with me and I conveyed this to Ms. Teesta.

2.8. I still remember that during same period, affidavits of victims/witnesses of Gulbarg Society case, Sardarpur, Naroda Patia, Naroda Gam, Ode village cases were sent to me by Teesta and got notarized in the office of Mr. Sohail Tirmizi, Advocate. If proper investigation of my e-mails accounts is done it will establish that these affidavits were e-mailed to me by Ms. Teesta and I got these affidavits signed on same date by evening and I have not made any changes in these affidavits. My duty was limited to manage affidavits and hand over with to her or her advocate. How and where these affidavits were used was not my subject of duty. I am told that hundreds of such false and fabricated affidavits filed by CJP in the Supreme Court to transfer the riot cases outside Gujarat.

2.9. It was prayed by the said Raiskhan Azizkhan Pathan to examine him as prosecution witness with a view to bring truth on record and if, prosecution is not inclined to examine him, then in the interest of justice, he may be examined as Court witness u/s 311 of the Code of Criminal Procedure to prove that Shri Nanumiya, Madinabanu and Imrankhan Pathan had falsely implicated him and lied before the Court and that he is an important link which can throw light on how the victims and witnesses were tutored, cheated and made to sign false affidavits by Ms. Teesta Setalvad in the name of "Interest of Community" and no innocent is punished or prosecuted on the basis of the false testimony

3. That the said application came to be heard by the learned Designated Court and by order dated 3.12.2010 the learned Judge rejected the said application Exh. 596 submitted by Respondent No. 2 herein-original applicant Raiskhan Azizkhan Pathan invoking powers u/s 311 of the Code of Criminal Procedure, however directed /authorized the Registrar, City Civil and Sessions Court, Ahmedabad authorizing him to make complaint in writing for the offences punishable under Sections 193, 194, 195, 196, 199 and 200 and other provisions of the IPC against the original applicant namely Raiskhan Azizkhan Pathan and other persons and send it to the competent Court having jurisdiction. That thereafter, pursuant to the aforesaid order and direction issued by the learned Special Court/learned Additional Sessions Judge, Court No. 5, Ahmedabad dated 3.12.2010, the applicant herein- Registrar City Civil & Sessions Court, Ahmedabad has filed Criminal Case/complainat against the aforesaid Raiskhan Azizkhan Pathan and other persons whose names may be disclosed during the course of investigation, in the Court of learned Metropolitan Magistrate,

Ahmedabad which is numbered as Inquiry Case No. 2 of 2011 for the offences punishable under Sections 193, 194, 195, 196, 199 and 200 of the IPC. That in the said complaint, the learned Metropolitan Magistrate has passed order below Exh.1 directing to send the said complaint for inquiry u/s 156(3) of the Code of Criminal Procedure and has directed the Assistant Commissioner of Police, B Division, Ahmedabad to inquire and investigate the aforesaid case and submit the report. Being aggrieved and dissatisfied with the impugned order passed by the learned Metropolitan Magistrate, Court No. 13, Ahmedabad dated 10.1.2011 passed below Ex.1 in Inquiry Case No. 2 of 2011 sending the said complaint for police investigation u/s 156(3) of the Code of Criminal Procedure to Assistant Commissioner of Police, B Division, Ahmedabad, the Petitioner-original complainant- Registrar City Civil & Sessions Court (Designated Court), Ahmedabad has preferred present Criminal Miscellaneous Application u/s 482 of the Code of Criminal Procedure.

4.0. Shri Shalin Mehta, learned advocate has appeared on behalf of the Petitioner-original complainant of Inquiry Case No. 2 of 2011. It is submitted that when the learned Additional Sessions Judge has directed the Registrar City Civil & Sessions Court (Designated Court), Ahmedabad to file the complaint relating to offences falling under Chapter XI of the IPC relating to the administration of justice, false evidence and offence against the public justice and when the Registrar, as per the direction, has filed the complaint before the competent Court, thereafter the learned Magistrate before whom the complaint is filed for the aforesaid offences has no jurisdiction to order for police investigation u/s 156(3) of the Criminal Procedure Code. It is submitted that in the aforesaid facts and circumstances, the learned Magistrate has no other alternative but to take cognizance as soon as the complaint is lodged and issue process straightway for the offences as enumerated in the said complaint.

4.1. Therefore, it is submitted that order of the learned Magistrate for police investigation u/s 156(3) of the Code of Criminal Procedure is absolutely illegal and without jurisdiction.

4.2. Shri Shalin Mehta, learned advocate for the Petitioner has submitted that it is true that u/s 202 of the Code of Criminal Procedure, the Magistrate may postpone issue of process against the accused and either inquire into the case himself and/or direct the investigation to be made by the Police Officer or by such other persons as he thinks fit for the purpose of deciding whether or not there is sufficient grounds for proceedings. However, he has submitted that in case like this, when the learned Additional Sessions Judge has by detailed speaking order having prima facie found that accused persons have committed the offences falling under Chapter XI of the IPC and has directed the Petitioner to file complaint, the learned Magistrate is not required to send the complaint for police investigation u/s 156(3) of the Criminal Procedure Code. It is submitted that as such object of Section 202 of the Code of Criminal Procedure requiring complainant and witnesses to be examined, is to find out, whether there are

sufficient grounds for proceedings against the accused and to prevent issue of process on complaint which are false or vexatious and intended to harass the person arraigned as accused. It is submitted that when the complainant is a public servant or a Court, there is implied presumption that the complaint has been made responsibly and bona fide and not falsely or vexatious and therefore, as such there is no requirement to examine the complainant when he is public servant or the court, before issuing the process.

4.3. It is further submitted by Shri Mehta, learned advocate for the Petitioner that by sending the complaint for police investigation u/s 156(3) of the Code of Criminal Procedure despite the specific findings given by the learned Additional Sessions Judge while passing the order below Exh.596 and observing that there is a prima facie case against Raiskhan Azizkhan Pathan and other accused for the offence punishable u/s 193, 194, 195, 195, 198, 199 and 200 of IPC, it will give power to Investigating Officer to sit as appellate authority against the order passed by the learned Additional Sessions Judge, which is not permissible. It is submitted that once prima facie observations are made and/or findings are given by the learned Additional Sessions Judge with respect to the committing offences falling under Chapter XI of the IPC and thereafter directing the authorized Officer to file a complaint before the competent Court, the learned Magistrate had no other alternative but to issue process. Therefore, it is requested to quash and set aside the impugned order passed by the learned Magistrate sending the aforesaid case for police investigation u/s 156(3) of the Code of Criminal Procedure and to direct the learned Magistrate to issue process for the offences alleged in the said complaint and/or to dispose of the present Criminal Miscellaneous Application with suitable observations that so as to see that the observations and findings given by the learned Additional Sessions Judge while passing the order below Exh.596 and directing the authorized officer to file complaint for the offence under Sections 193, 194, 195, 196, 199 and 200 of the IPC against the accused persons are not nullified by the Investigating Officer and is given full effect.

5. Shri Bhargav Bhatt, learned advocate has appeared on behalf of the Respondent No. 2-original applicant. He has categorically and specifically made a statement at the bar that so far as Respondent No. 2-original applicant is concerned, he sticks to whatever is stated by him in the application Exh. 596 and he is also not challenging any of the observations and findings given by the learned Additional Sessions Judge while passing the order dated 3.12.2010 so far as original applicant is concerned. It is submitted that so far as Respondent No. 2 is concerned, he is ready to face prosecution for the offences alleged in the complaint/criminal case. However, he has submitted that so far as other accused persons are concerned, further investigation and inquiry is required and therefore, learned Magistrate has rightly passed an order to send the said complaint for inquiry u/s 156(3) of the Criminal Procedure Code. It is further submitted by him that he has no objection if the suitable observation is made that the aforesaid inquiry/investigation by the concerned Police Officer u/s 156(3) of the Code of Criminal Procedure would be with respect to other accused

persons and so far as applicant is concerned, the concerned police officer may and/or cannot go beyond or contrary to the observations and findings given by the learned Additional Sessions Judge made against original applicant while passing the order dated 3.12.2010. Therefore, it is submitted that as such no illegality has been committed by the learned Magistrate while sending the said complaint for police inquiry/investigation u/s 156(3) of the Code of Criminal Procedure which would be as such with respect to other accused persons who are yet to be traced.

6.0. Shri Jayant Panchal, learned Counsel has appeared on behalf of the Respondent No. 1-State Government. It is submitted that as such whatever observations and findings are given by the learned Additional Sessions Judge while passing the order dated 3.12.2010 passed below Exh.596 in Sessions Case No. 203 of 2009 are against the original applicant Raiskhan Azizkhan Pathan and with respect to other accused persons, the further inquiry/investigation is required and therefore, no illegality has been committed by the learned Metropolitan Magistrate in sending the said complaint for the police investigation u/s 156(3) of the Criminal Procedure Code. It is submitted that as such other accused persons are yet to be traced and therefore, further investigation and inquiry is required and therefore, the learned Magistrate has rightly passed the order for police investigation u/s 156(3) of the Criminal Procedure Code. It is further submitted that even the learned Additional Sessions Judge while passing the order dated 3.12.2010 below Exh.596 has observed that it has been prima facie found that the original applicant and other persons have committed an offence affecting the administration and public justice and fabricating false evidence and therefore, it is expedient in the interest of justice that such offence is further probed into so that administration and public justice remain. Therefore, it is submitted that even the learned Judge has also observed that aforesaid is required to be further probed and further probe is required with respect to other persons who have committed the aforesaid offences. Therefore, it is submitted that the learned Magistrate has not committed any error and/or illegality in sending the said complaint for police investigation u/s 156(3) of the Criminal Procedure Code. It is submitted by Shri Panchal, learned Counsel for the Respondent No. 1 State that when there are serious allegations of fabricating false evidence with a view to secure conviction of the accused, the same is required to be inquired into thoroughly and role of the other accused is also required to be inquired into and investigated. It is further submitted that even in the complaint Respondent No. 2 Raiskhan Azizkhan Pathan is shown to be an accused along with other persons whose names may be disclosed during the investigation/inquiry. Therefore, it is submitted that those other accused persons are yet to be investigated and inquired into and therefore, the learned Magistrate has rightly passed an order for sending said the complaint for police investigation u/s 156(3) of the Criminal Procedure Code.

6.1. Shri Panchal, learned Counsel for the Respondent No. 1-State has further submitted that even while confirming the impugned order it may also be clarified

that police investigation as ordered by learned Magistrate passing the impugned order would be only with respect to other accused persons and so far as original applicant Raiskhan Azizkhan Pathan is concerned, as observed by the learned Additional Sessions Judge a prima facie case is already made out against him for the offences alleged and that after inquiry/investigation u/s 156(3) of the Code of Criminal Procedure the concerned officer may not submit the report which would nullify and/or contrary to the findings given by the learned Additional Sessions made against Shri Raiskhan Azizkhan Pathan, made while passing the order dated 03.12.2010 passed below Exh.596 in Sessions Case No. 203 of 2009.

7.0. Heard the learned advocates for the respective parties at length. At the outset, it is required to be noted that the accused persons of Sessions Case No. 203 of 2009 of Naroda Patiya Case are facing the trial for the serious offences with respect to the incident which has taken place after the Godhra riots which took place in the year 2002. It appears that during the course of aforesaid trial number of witnesses came to be examined inclusive of one Mahomad Sharif Rahimmiyan Malek (P.W. No. 20), one Nannumiyan Rasulmiyan Malek (P.W. No. 111), Madinaben Rafikkhan Chandkhan Pathan (P.W. 112), Badshah Usmanmiya Qureshi (P.W. 114), Imrankhan Asharafkhan Pathan (P.W. 133), Maksudmiyan Husainmiyan (P.W. 144) and Yunusmiyan Hussainmiyan Qureshi (P.W. 145). It appears that some affidavits were filed by the aforesaid witnesses before the Investigating Agency and in the cross examination they have denied what is stated in the respective affidavits and it appears that said Raiskhan Azizkhan Pathan has been charged for manipulating/inserting extra para in their original affidavits which were filed through said persons. It appears that accordingly Respondent No. 2-original applicant as he was charged for manipulating and inserting extra para in the original affidavits and/or creating false and fabricating affidavits/evidences, filed the aforesaid application at Exh.596 u/s 311 of the Code of Criminal Procedure to examine him as a Court/prosecution witness by submitting that in fact whatever is done by him was done on the instruction from other persons named in the application and at their instance false and fabricated affidavits were filed before the Hon''ble Court to transfer the riot cases outside the Gujarat and he wants to declare the truth before the Hon''ble Court and wants to throw light on how the victims and witnesses were tutored, cheated and made to sign false affidavits by person named in the aforesaid application and no innocent is punished or prosecuted on the basis of the false testimony. That the learned Special Court by order dated 3.12.2010 has rejected the said application Exh. 596 submitted by the Respondent No. 2-original applicant Raiskhan Azizkhan Pathan to examine him as Court/prosecution witness. However, the learned Judge has specifically observed that the original applicant is involved in fabricating the false evidence with a view to secure conviction of the accused for the offences which attract capital punishment or imprisonment for life or for seven years or upward and the learned Judge has also further observed that prima facie case is made out for the offences under the provisions of Sections 193, 194, 195, 196, 199 and 200 of the Indian Penal Code in relation to the

proceedings in the said Court by using and tendering such affidavit in evidence and therefore, the learned Judge has directed authorized person to make a complaint in writing for the aforesaid offences against Respondent No. 2 -original applicant namely Raiskhan Azizkhan Pathan and other persons and send it to the competent Court having jurisdiction. Accordingly, the Petitioner had filed the complaint before the learned Magistrate, Ahmedabad against the Respondent No. 2 Raiskhan Azizkhan Pathan and other persons which is numbered as Inquiry Case No. 2 of 2011 and on receipt of the said complaint being Inquiry Case No. 2 of 2011 and considering the nature of allegations, as the learned Magistrate was of the opinion that the same is required further thorough investigation by the higher police officer, he has directed to send the said complaint for police investigation u/s 156(3) of the Code of Criminal Procedure. Being aggrieved with the same, the Petitioner-original complainant has preferred present Criminal Miscellaneous Application making grievance that once the learned Additional Sessions Judge has observed that there is a prima facie case made out for the aforesaid offences and has directed the authorized-Petitioner to file complaint for the aforesaid offences, the learned Magistrate had no jurisdiction to send the said complaint for police investigation u/s 156(3) of the Code of Criminal Procedure and he ought to have straightway issued process against the accused persons. So far as aforesaid is concerned, it is required to be noted that as such whatever prima facie observations and findings given by the learned Additional Sessions Judge while passing the order dated 3.12.2010 and directing the authorized officer-Petitioner to file a complaint for the aforesaid offences is concerned, they only with respect to Respondent No. 2 Raiskhan Azizkhan Pathan and for other accused persons who are yet to be treated/found out and investigated and inquired into. For that learned Magistrate may either inquire himself and/or may send the said complaint for police investigation u/s 156(3) of the Code of Criminal Procedure as provided u/s 202 of the Code of Criminal Procedure. At this stage, it is also required to be noted that even in the order dated 3.12.2010, the learned Additional Sessions Judge, Court No. 5, Ahmedabad while passing order below Exh.596 has also observed that prima facie offences are committed under the provisions of Sections 193, 194, 195, 196, 199 and 200 of the Indian Penal Code in relation to the proceedings in the said Court by using and tendering such affidavit in evidence and that original applicant Raiskhan Azizkhan Pathan and other persons have committed an offences affecting administration of public justice and fabricating false evidence and therefore, it is expedient in the interest of justice such offence is further probed into so that administration and public justice remain pure and clean. Therefore, even while passing the aforesaid order directing the authorized officer-Petitioner to file a complaint for the aforesaid offences against original applicant and other persons, the learned Judge has also observed that the same is required to be further probed into so far as other accused persons are concerned. It is also required to be noted at this stage that even complaint filed by the Petitioner is against the original applicant - Raiskhan Azizkhan Pathan and other persons whose names may be disclosed during the course of investigation.

Therefore, those other persons who are to be prosecuted for the aforesaid offence is required to be further inquired and investigated and for that learned Magistrate has passed the impugned order sending the complaint for police investigation u/s 156(3) of the Code of Criminal Procedure. It cannot be disputed that as such learned Magistrate has jurisdiction u/s 202 of the Code of Criminal Procedure, either to inquire into the case himself and/or by other officers and/or may send the said complaint for police investigation u/s 156(3) of the Code of Criminal Procedure. Therefore, in the facts and circumstances of the case and to find out the other persons who are alleged to have committed the aforesaid offences are yet to be traced and find out and therefore, the learned Magistrate has rightly exercised the discretion and has not committed any error and/or illegality and/or cannot go beyond the statute by sending the complaint for police investigation u/s 156(3) of the Code of Criminal Procedure.

8.0. However, at the same time, anxiety on the part of the Petitioner that by sending the complaint for police investigation u/s 156(3) of the Code of Criminal Procedure, the prima facie observations and findings given by the learned Additional Sessions Judge which are made cannot be nullified, also deserves consideration. It appears that in case where any Court grants permission and/or directs an authorized officer of the Court to file the complaint for the offences under Chapter XI of the Indian Penal Code and after inquiry the accused persons are named and when the complaint is filed by the authorized officer of the Court for the aforesaid offences, in that case, the learned Magistrate is not required to send the said complaint for police investigation u/s 156(3) of the Code of Criminal Procedure and is required to issue process against said accused persons as there would be prima facie finding against the accused persons after inquiry by the concerned Court. However, in case where the other accused are yet to be traced out and it is to be found out whether those other accused persons and their role in committing the aforesaid offences under Chapter XI of the Indian Penal Code, in that case, investigation is required with respect to those accused persons and therefore, the learned Magistrate is free to pass order u/s 202 of the Code of Criminal Procedure and send the complaint for police investigation u/s 156(3) of the Code of Criminal Procedure with respect to those unnamed accused persons who are yet to be traced and found out. Therefore, as such aforesaid police investigation u/s 156 of the Code of Criminal Procedure would be with respect to those accused persons whose names may be disclosed during the investigation i.e. with respect to those unnamed accused persons. Therefore, while submitting appropriate report after investigation u/s 156(3) of the Code of Criminal Procedure by the concerned police officer is required to see that his report is not contrary to the findings of the learned Additional Sessions Judge made while passing order dated 3.12.2010 passed below Exh.596 in Sessions Case No. 203 of 2009, more particularly with respect to having found prima facie case against the original applicant-Raiooshkan Pathan for the offences alleged and as such his investigation would be with respect to those unnamed accused persons whose names may be disclosed during the course of investigation by

him. With this, observations and clarifications, the impugned order passed by the learned Magistrate deserves to be confirmed and the present Criminal Miscellaneous Application is required to be disposed of.

9.0. In view of the above and with the above observations and clarifications, impugned order passed by the learned Metropolitan Magistrate Court No. 13, Ahmedabad dated 10.1.2011 below application Exh.1 sending the inquiry case for police investigation u/s 156(3) of the Code of Criminal Procedure is hereby confirmed with further observations and clarifications that basically the aforesaid police investigation u/s 156(3) of the Code of Criminal Procedure would be with respect to unnamed accused persons who are yet to be traced and whose names are yet to be disclosed during the course of investigation and while submitting the final report concerned Police Officer is directed to see to it that the observations and findings made by the learned Additional Sessions Judge while passing the order dated 3.12.2010 passed below Exh. 596 with respect to prima facie case against the original applicant Raishkhan Pathan for the offences under Sections 193, 194, 195, 196, 199 and 200 and other provisions of the Indian Penal Code are not nullified and as even stated by Shri Bhargav Bhatt, learned advocate for the Respondent No. 2, Respondent No. 2 is not challenging any of the findings and observations made against him i.e. Respondent No. 2 herein that a prima facie case is made out against him for the offences u/s 193, 194, 195, 196, 199 and 200 and other provisions of the Indian Penal Code for which the aforesaid criminal case is filed by the Petitioner and that he is ready and willing to face trial for the alleged offences subject to the defence available to him during the trial. With this, present Criminal Miscellaneous Application is dismissed /disposed of.