

(2015) 02 GUJ CK 0019
In the Gujarat High Court

Case No : Special Criminal Application (Direction) No. 5241 of 2014

Bharat Valji Hangama and Others

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 12-02-2015

Acts Referred:

Constitution of India, 1950 — Article 21, 22, 226, 32

Criminal Procedure Code, 1973 (CrPC) — Section 106, 107, 108, 109, 110

Citation : (2016) GLH 1 100

Hon'ble Judges : J.B. Pardiwala, J.

Bench : Single Bench

Advocate : Ashish M. Dagli, for the Appellant; A.N. Shah, APP, Advocates for the Respondent

Judgement

J.B. Pardiwala, J.—By this writ application under Article-226 of the Constitution of India, the petitioners had prayed for the following prayer:--

"(A) Be pleased to admit and allow this petition;

(B) Be pleased to allow this petition by issuing an appropriate writ, order or direction holding that the powers exercised by the respondent No. 2 Mamlatdar in respect of Chapter Case Nos. 309, 310 and 311 of 2014 with respect to the petitioners is unjust, improper, unfair and in breach of principles of natural justice and suitable order and/or directions be made in this regard against the respondent No. 2 in the interest of justice in the facts and circumstances of the case;

(C) Be pleased to allow this petition by issuing necessary order which pertains to proceedings of Chapter Case Nos. 309, 310 and 311 of 2014 and be pleased to call for the record of the same and after perusing the same, be pleased to order that the proceedings tried by the respondent No. 2 are in breach of the provisions of the Code of Criminal Procedure and also acted bias of not accepting the bail bonds of the petitioners and the same amounts to an act of arbitrariness,

unreasonableness and also in breach of the principles of natural justice;

(D) Be pleased to allow this petition by issuing an appropriate writ, order or suitable direction against the respondent No. 2 so as to compensate the petitioners as liberty of the petitioners is taken away and the way in which proceedings are tried, suitable order appropriately compensating the petitioners be also made in the facts and circumstances of the case;

(E) Be pleased to allow this petition by issuing an appropriate writ, order or directions directing the office of the respondent No. 2 to forthwith supply the record pertains to the Chapter Case Nos. 309, 310 and 311 of 2014 in a sealed cover and the same be sealed in presence of an independent Officer and the record pertaining to the application made by the person by which Chapter Cases have been registered;

(F) Be pleased to allow this petition by issuing an appropriate writ, order or directions and strict view may be taken against the respondent No. 2 as the way in which the proceedings are tried by the respondent No. 2 and the liberty of the petitioners is taken away and the proceedings tried is absolutely unjust, improper, unfair and in clear violation of the principles of natural justice as their bail bonds are also not acceptable by the respondent No. 2;

(G) During the pendency and final disposal of the present petition, be pleased to forthwith accept the bail bond of the petitioners in respect of Chapter Case Nos. 309, 310 and 3011 of 2014 and be pleased to direct the respondent No. 2 to provide all necessary copies related to the Chapter Cases filed against the petitioners;

(H) During the pendency and final disposal of the present petition, be pleased to suitably order that the record of Chapter Case Nos. 309, 310 and 311 of 2014 may be protected and the same may not be tampered with in any manner;

(I) Pass any such other and/or further orders that may be thought just and proper, in the facts and circumstances of the present case."

2. The facts giving rise to this writ application may be summarized as under:--

"2.1 The petitioners are permanent residents of the village Khakhrechi situated at Taluka Maliya Miyana, Dist: Rajkot (Morbi). It appears that they had a dispute with some individuals of the village who, in turn, filed an application before the Police that necessary proceedings be initiated against the applicants under Sec. 107 of the Code of Criminal Procedure, 1973 (for short "the Code") which are popularly known as the Chapter Proceedings. On receipt of such complaint lodged by few individuals of the village, the proceedings were numbered as Chapter Case Nos. 309, 310 and 3011 of 2014 before the Mamlatdar, Maliya Miyana. It also appears that the Police arrested the three applicants herein and produced them before the Mamlatdar, Maliya Miyana.

2.2 After being produced by the Police before the Mamlatdar, the applicants

offered to furnish the necessary bonds for maintenance of peace. However, it appears that such bonds were not accepted and without any inquiry in that regard straightway they were taken in custody and were sent to jail at Morbi. It appears that thereafter on the next day one application was filed before the Mamlatdar with a prayer that the necessary documents of the proceedings be supplied, however, the same was outright refused. Once again a request was made that since the applicants had been detained pursuant to the order passed by the Mamlatdar, the necessary documents be supplied so that the applicants could initiate appropriate legal remedy before the appropriate Forum in accordance with law. Despite such requests being made, the Mamlatdar refused to part with the documents.

2.3 it appears that the applicants remained in jail for a period of almost 7 days. When this petition was taken-up for hearing, I was shocked to learn that the Mamlatdar in the Chapter proceedings without any inquiry in that regard or without following any procedure of law laid down in the Code, forwarded the applicants straightway to jail."

3. In such circumstances, the learned AGP was directed to immediately ask the concerned Mamlatdar to remain personally present before this Court. The Mamlatdar remained present on 5th December, 2014. I inquired with the Mamlatdar whether he had any idea about the provisions of Chapter-VIII of the Code which provides for security for keeping peace and for good behavior. I also inquired with the Mamlatdar whether he had any idea about the provisions of law starting from Sec. 106 to Sec. 124 of the Code. To my utter dismay I found that the Mamlatdar had completely no idea of any of the provisions of the Code. He pleaded complete ignorance about the same. He orally submitted that since the police brought the three applicants at his Office with a complaint lodged by some individuals of the village, he, in turn, directed the Police officer to send the three applicants to jail.

3.1 The Mamlatdar also admitted that the day on which the three applicants were produced, they were ready and willing to furnish the necessary bonds for the maintenance of peace and good behavior, however, the same were not accepted. The learned AGP submitted that the bonds have now been accepted and the applicants have been released from jail. Due to paucity of time I was unable to dictate the order immediately and, therefore, the order was kept reserved. The learned AGP submitted that the matter be closed by recording that the applicants have been released from the detention.

4. Taking into consideration the seriousness of the issue which relates to the personal liberty of an individual unlawfully detained in jail, without following any procedure of law and without there being any power in that regard, I have thought fit to deliver the judgment in details.

5. With a view to decide the controversy involved in this petition, it will be necessary to refer to the provisions of Section 107 which reads thus:

"107. Security for keeping the peace in other cases.--(1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility and is of opinion that there is sufficient ground for proceeding, he may in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond with or without sureties for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.

(2) Proceeding under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act as aforesaid beyond such jurisdiction."

6. Sections 111 to 116 are also relevant for the purpose of this petition, which read as under:--

"111. Order to be made.--When a Magistrate acting under Section 107, Section 108, Section 109 or Section 110, deems it necessary to require any person to show cause under such section he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required."

"112. Procedure in respect of person present in Court.--If the person in respect of whom such order is made is present in Court, it shall be read over to him, or, if he so desires, the substance thereof shall be explained to him."

"113. Summons or warrant in case of person not so present.--If such person is not present in Court, the Magistrate shall issue a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is to bring him before the Court; Provided that whenever it appears to such Magistrate, upon the report of a police officer or upon other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest."

"114. Copy of order to accompany summons or warrant.--Every summons or warrant issued under section 113 shall be accompanied by a copy of the order made under section 111, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same."

"115. Power to dispense with personal attendance.--The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called

upon to show cause why he should not be ordered to execute a bond for keeping the peace or for good behaviour and may permit him to appear by a pleader."

"116. Inquiry as to truth of information.--(1) When an order under section 111 has been read or explained under section 112 to a person in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant, issued under section 113, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary."

(2) Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trial and recording evidence in summons - cases.

(3) After the commencement, and before the completion, of the inquiry under sub-section (1), the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquility or the commission of any offence or for the public safety, may, for reason to be recorded in writing, direct the person in respect of whom the order under section 111 has been made to execute a bond, with or without sureties, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry and may detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded:

Provided that--

(a) No person against whom proceedings are not being taken over under Section 108, Section 109, or Section 110 shall be directed to execute a bond for maintaining good behaviour.

(b) The conditions of such bond, whether as to the amount thereof or as to the provision of sureties or the number thereof or the pecuniary extent of their liability, shall not be more onerous than those specified in the order under section 111.

(4) For the purposes of this Section the fact that a person is a habitual offender or is so desperate and dangerous as to render his being at large without security hazardous to the community may be provided by evidence of general repute or otherwise.

(5) Where two or more persons have been associated together in the matter under inquiry, they may be dealt within the same or separate inquiries as the Magistrate shall think just.

(6) The inquiry under this section shall be completed within a period of six months from the date of its commencement, and if such inquiry is not so completed, the proceedings under this Chapter shall, on the expiry of the said period, stand terminated unless, for special reasons to be recorded in writing, the Magistrate otherwise directs:

Provided that where any person has been kept in detention pending such inquiry, the proceeding against that person, unless terminated earlier, shall stand terminated on the expiry of a period of six months of such detention.

(7) Where any direction is made under sub-section (6) permitting the continuance of proceedings, the Sessions Judge may, on an application made to him by the aggrieved party, vacate such direction if he is satisfied that it was not based on any special reason or was perverse."

7. The power under Section 107 can be exercised when the Special Executive Magistrate receives an information that any person is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act that may probably occasion a breach of peace or disturb the public tranquility. The said section further provides that if the Executive Magistrate is of the opinion that there is sufficient ground for proceeding, he may in the manner provided in the Code require such person to show cause why he should not be ordered to execute a bond (with or without sureties) for keeping peace for such period, not exceeding one year, as the Magistrate deems fit. Section 111 of the said Code mandates that when a Magistrate acting under section 107 deems it necessary to require any person to show cause, he shall make an order in writing setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force. Section 113 provides that if such person to whom notice is intended to be issued is not present in Court, the Magistrate shall issue a summons requiring him to appear. In exceptional circumstances, the said section gives powers to the learned Magistrate to issue warrant of arrest. Section 114 mandates that every summons issued under section 113 shall be accompanied by a copy of the order made under section 111 and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with or arrested under the same. Section 116 lays down the procedure for holding the inquiry. Under section 116, the Executive Magistrate is under an obligation to make enquiry into the truth of the information upon which action has been taken and for that purpose he has to take such further evidence as may be necessary. Sub-section (2) of section 116 mandates that such an enquiry shall be made as nearly as may be practicable in the manner prescribed for conducting the trial and recording evidence in summons cases. Sub-section (3) provides that if the Magistrate considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquility or the commission of any offence or for the public safety, he may after commencement but before completion of the enquiry, for reasons to be recorded in writing direct the person in respect of whom the order under section 111 has been made to execute a bond with or without surety for keeping peace or maintaining good behaviour until conclusion of the inquiry and may detain him in custody until such bond is executed or in default of execution, until the inquiry is concluded.

8. I may quote with profit a recent pronouncement of the Supreme Court in the

case of *Rajender Singh Pathania and Others Vs. State of N.C.T. of Delhi and Others*, wherein the Supreme Court made the following observations as contained in paragraphs 14 and 15:--

"14. The object of the Sections 107/151, Cr.P.C. are of preventive justice and not punitive. Section 151 should only be invoked when there is imminent danger to peace or likelihood of breach of peace under Section 107, Cr.P.C. An arrest under S. 151 can be supported when the person to be arrested designs to commit a cognizable offence. If a proceeding under Sections 107/151 appears to be absolutely necessary to deal with the threatened apprehension of breach of peace, it is incumbent upon the authority concerned to take prompt action. The jurisdiction vested in a Magistrate to act under Section 107 is to be exercised in emergent situation.

15. A mere perusal of Section 151 of the Code of Criminal Procedure makes it clear that the conditions under which a police officer may arrest a person without an order from a Magistrate and without a warrant have been laid down in Section 151. He can do so only if he has come to know of a design of the person concerned to commit any cognizable offence. A further condition for the exercise of such power, which must also be fulfilled, is that the arrest should be made only if it appears to the police officer concerned that the commission of the offence cannot be otherwise prevented. The Section, therefore, expressly lays down the requirements for exercise of the power to arrest without an order from a Magistrate and without warrant. If these conditions are not fulfilled and, a person is arrested under Section 151, Cr.P.C., the arresting authority may be exposed to proceedings under the law for violating the fundamental rights inherent in Articles 21 and 22 of Constitution. (Vide: *Ahmed Noormohmed Bhatti Vs. State of Gujarat and Others*, . (See also: *Joginder Kumar Vs. State of U.P. and others*, ; *D.K. Basu Vs. State of West Bengal*, ."

9. The events narrated above leave no doubt that the Magistrate grossly offended against the mandatory provisions contained in Sections 112, 114 and 116 of the Code and exhibited a total lack of judicial approach. When the applicants were produced before the Magistrate by the Police, neither was the order read-over, the substance thereof explained, nor was a copy of the order delivered to them intimating them the substance of the opinion received by the Magistrate on the basis whereof the proceedings under Sec. 107 had been started. They were kept totally in dark. After their appearance in the Court, they were sent to prison and were kept in unlawful detention for a period of 7 days.

10. The stage when a party against whom a 107 Cr.P.C. proceedings has been initiated, can be called upon to execute the interim bond. An order under sub-sec. (3) for furnishing of bond can be made only after the commencement of the inquiry and before its completion provided the allegations forming the basis of the parent proceedings or the allegations leading to the necessity for furnishing of interim bond are tested by inquiry and judicial mind is applied for ascertaining whether there is any prima facie justifiable basis for such a direction. The inquiry

does not commence as soon as the delinquent appears and the notice under Sec. 112 of the Code is read-out to him.

11. The Supreme Court in the case of *Madhu Limaye and Another Vs. Ved Murti and Others*, , has emphasized on the position that the bare allegations cannot form the foundation of the order for a bond and failing furnishing of it detention of the delinquent but the mandate of the law is that the inquiry must commence and the Magistrate must proceed to ascertain the truth of the allegations by application of his judicial mind and look for the material which would substitute the allegation in true fact. The inquiry contemplated is an acceptable legal process by which allegations can be converted into facts. What that process would be should be left to the discretion of the Magistrate with reference to the fact of each case, but he must adopt an acceptable judicial method for testing the allegations and recording findings of fact with reference to the acceptability or otherwise of such allegations.

12. Even if I accept the submissions canvassed by the learned AGP that the applicants were arrested by the Police in exercise of his powers under Sec. 151 of the Code, still they could not have been detained for a period exceeding 24 hours. So far as the second respondent, the Executive Magistrate, was concerned, in a complaint before him under Sec. 107 of the Code, he had no power to direct them to be sent to jail.

13. Section 151 of the Code empowers the police to arrest a person, but as provided by Sec. 151(2) of the Code, no person arrested under Sub-sec(1) of Sec. 151 could be detained in custody for a period exceeding 24 hours from the time of his arrest unless his further detention was required or otherwise under any other provisions of the Code or of any other law for the time being in force. In such circumstances when the applicants were produced before the second respondent who was an Executive Magistrate and before whom the proceedings under sec. 107 of the Code were initiated, no question of the second respondent releasing the three persons on bail at that stage could also have ever arisen for consideration. The second respondent was completely ignorant of the law that the proceedings under Sec. 107 of the Code are concerning proper bonds to be taken from the concerned persons by way of security for keeping peace. These proceedings as stated above are popularly known as the Chapter Proceedings. There is no question of any person being accused of any offence in such proceedings. The term "offence" has been defined under Sec. 2(n) of the Code which would indicate that the proceedings under Sec. 107 of the Code have nothing to do with any accusation regarding any offence as such. The Executive Magistrate considered himself to be a Judicial Magistrate while exercising his power under Sec. 107 of the Code. The applicability of Sec. 116(3) of the Code also could obviously not arise for consideration and the Executive Magistrate had not passed any order under sec. 111 of the Code. The applicability of Sec. 167 of the Code has also to be ruled-out. In the same manner the applicability of the provisions of Sections 436 and 437 are also to be ruled-out of consideration.

14. In such circumstances referred to above the Executive Magistrate had no power, jurisdiction or authority to direct the police to send the three applicants to jail. The matter does not rest over here. Unfortunately, although the applicants were ready to furnish the bonds the same were not accepted. The applicants remained in custody for a period of 7 days and perhaps would have continued to remain but for the filing of this petition and directing the AGP to inquire about the same.

15. In the aforesaid context I may quote with profit the observations of the Supreme Court in the case of *Madhu Limaye and Another Vs. Ved Murti and Others*, .

"It appears to us that the powers of the Magistrate to ask for an interim bond were not properly exercised in this case and consequently the order to the petitioners to furnish interim bond could not be made. That stage had not been reached under the scheme of the Code of Criminal Procedure. The Magistrate could only ask for an interim bond if he could not complete the enquiry and "during the completion of the enquiry" postulates a commencement of the enquiry, which means commencing of a trial according to the summons procedure. It was not given to the Magistrate to postpone the case and hear nobody and yet ask the petitioners to furnish bond for good conduct. The Magistrate should have made at least some effort to get a statement from Brij Mohan or Ved Murti Bhatt or any of the witnesses named in the challan. Nothing of this kind was done. Therefore the proceedings for asking for an interim bond were completely illegal." It was further held by their Lordships as under:--

"It is quite clear that the Magistrate was too much in hurry. He did not read the law to inform himself about what he was to do. Having the petitioners before him and having read to them the order under S. 112 it was his duty either to release them unconditionally or to ask them to give an interim bond for good conduct but only after he had started inquiring into the truth of the information. It was for this reason that we held that the Magistrate did not act according to the law and his action after August 9, 1970 in detaining the petitioners in custody was illegal." 16. While explaining the object of Section 107 Cr.P.C. a Constitution Bench of the Supreme Court in *Madhu Limaye Vs. Sub-Divisional Magistrate, Monghyr and Others*, observed in paragraphs 33 and 34 of the judgment as under:--

"33. The gist of S. 107 may now be given. It enables certain specified classes of Magistrates to make an order calling upon a person to show cause why he should not be ordered to execute a bond, with or without sureties for keeping the peace for such period not exceeding one year as the Magistrate thinks fit to fix. The condition of taking action is that the Magistrate is informed and he is of opinion that there is sufficient ground for proceeding that a person is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility. The Magistrate can proceed if the person is within his jurisdiction or

the place of the apprehended breach of the peace or disturbance is within the local limits of his jurisdiction. The section goes on to empower even a Magistrate not empowered to take action, to record his reason for acting, and then to order the arrest of the person (if not already in custody or before the Court) with a view to sending him before a Magistrate empowered to deal with the case, together with a copy of his reasons. The Magistrate before whom such a person is sent may in his discretion detain such person in custody pending further action by him.

34. The section is aimed at persons, who cause a reasonable apprehension of conduct likely to lead to a breach of the peace or disturbance of the public tranquility. This is an instance of preventive justice which the Courts are intended to administer. This provision like the preceding one is an aid of orderly society and seeks to nip in the bud conduct subversive of the peace and public tranquility. For this purpose, Magistrates are invested with large judicial discretionary powers for the preservation of public peace and order. Therefore, the justification for such provisions is claimed by the State to be in the function of the State which embraces not only the punishment of offenders but as far as possible, the prevention of offences."

17. Mr. Dagli, the learned counsel for the petitioner vehemently submitted that the case on hand is one in which appropriate compensation should be awarded since the case is one of infringement of Article 21 of the Constitution of India.

18. In Rudul Sah Vs. State of Bihar and Another, , the Supreme Court has held that one of the ways in which the violation of the fundamental right under Art. 21 of the Constitution by the authorities of the State can reasonably be prevented is to direct payment of monetary compensation to the individuals whose rights are affected. Chandrachud, C.J. as his Lordship then was, who delivered the judgment on behalf of the three Judges Bench, in para 10 has held:

"..... Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Art. 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilization is not to perish in this country as it has perished in some others too well known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers." 19. In a recent case in the State of Maharashtra Vs. Christian Community Welfare Council of India and Another, ,

the Supreme Court has observed that the law that the liability to pay to the aggrieved party who has suffered because of police excesses cannot be doubted and has further held that whether such compensation paid by the State can be recovered from the officers concerned will depend on the fact whether the alleged misdeeds by the officers concerned are committed in course of discharge of their lawful duties or beyond or in excess of the same and this will have to be determined in a proper inquiry.

20. This issue has been considered by the Supreme Court in *Rajender Singh Pathania and ors. v. State of N.C.T. of Delhi* (supra), wherein the Bench observed in paragraphs 17, 18 and 19 as under:--

"17. The issue of award of compensation in case of violation of fundamental rights of a person has been considered by this Court time and again and it has consistently been held that though the High Courts and this Court in exercise of their jurisdictions under Articles 226 and 32 can award compensation for such violations but such a power should not be lightly exercised. These Articles cannot be used as a substitute for the enforcement of rights and obligations which could be enforced efficaciously through the ordinary process of courts. Before awarding any compensation there must be a proper enquiry on the question of facts alleged in the complaint. The court may examine the report and determine the issue after giving opportunity of filing objections to rebut the same and hearing to the other side. Awarding of compensation is permissible in case the court reaches the same conclusion on a re-appreciation of the evidence adduced at the enquiry. Award of monetary compensation in such an eventuality is permissible "when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers."

(Vide: *Sebastian M. Hongray Vs. Union of India (UOI)*, ; *Bhim Singh, MLA Vs. State of Jammu & Kashmir and Others*, ; *Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others*, ; *D.K. Basu Vs. State of West Bengal*, ; *The Chairman, Railway Board and Others Vs. Mrs. Chandrima Das and Others*, ; and *S.P.S. Rathore Vs. State of Haryana and Others*, .

18. In *Sube Singh Vs. State of Haryana and Others*, , while dealing with similar issue this Court held as under:

"In cases where custodial death or custodial torture or other violation of the rights guaranteed under Article 21 is established, the courts may award compensation in a proceeding under Article 32 or 226. However, before awarding compensation, the Court will have to pose to itself the following questions: (a) whether the violation of Article 21 is patent and incontrovertible, (b) whether the violation is gross and of a magnitude to shock the conscience of the court, (c) whether the custodial torture alleged has resulted in death?.. Where there are clear indications that the allegations are false or exaggerated fully or in part, the courts may not award compensation as a public law remedy under Article 32 or 226, but relegate the aggrieved party to the traditional remedies by way of

appropriate civil/criminal action." (See also: Munshi Singh Gautam (D) and Others Vs. State of M.P., ; and Bharat Amratlal Kothari Vs. Dosukhan Samadkhan Sindhi and Others, .

19. In view of the above, we are of the considered opinion that the High Court erred in awarding even token compensation to the tune of Rs. 25,000/- each as the High Court did not hold any enquiry and passed the order merely after considering the status report submitted by the appellant No. 1 without hearing any of the persons against whom allegations of abuse of power had been made. Such an order is liable to be set aside."

21. Taking into consideration the aforesaid decisions, I am not persuaded to pass any order of compensation. At the same time, I would like to put all the Executive Magistrates functioning in the State of Gujarat on guard that in future, if any such case is reported like the one on hand, then the Court will take a very strict view of the matter. I would also like to clarify that I am not going into any other aspects of the matter, more particularly the other reliefs prayed for in this petition. If any proceedings are pending as on today before the Authority, the same be concluded at the earliest in accordance with law.

22. A copy of this judgment be sent to the Principal Secretary, Home Department as well as the Law Secretary of the State, with further instructions to circulate this judgment amongst all the Executive Magistrates all through out the State.