

(2021) 08 GUJ CK 0035

In the Gujarat High Court

Case No : R/Special Criminal Application No. 5584 Of 2019

Dhirubhai Ravjibhai Baraiya

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 17-08-2021

Acts Referred:

Constitution Of India, 1950 — Article 226
Indian Penal Code, 1860 — Section 279, 304(A), 337, 338
Motor Vehicles Act, 1988 — Section 177, 184
Code Of Criminal Procedure, 1973 — Section 36, 154(3), 156(3), 200, 482

Citation : (2021) 08 GUJ CK 0035

Hon'ble Judges : Ilesh J. Vora, J

Bench : Single Bench

Advocate : Devansh J Dave, Jigneshkumar P Pandav, Gaurang K Chauhan, Krina Calla

Final Decision : Dismissed

Judgement

Ilesh J. Vora, J

1. By way of present petition filed under Article 226 of the Constitution of India, the petitioner has prayed for following reliefs:

â??(A) the Hon'ble Court may be pleased to issue to writ mandamus or any other appropriate writ, order or direction to the Respondents for proper

of investigation from Chalala Police Station to other police station regard to FIR bearing C.R.No.I-4 of 2019 registered with Chalala Police Station

under Section 279, 304(A), 337 and 338 of the Indian Penal Code and 177 and 184 of the MVA Act only;

(B) The Hon'ble Court may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction to Respondents for conduction a

detailed proper investigation in FIR bearing C.R.NO.I-57/2018;

(C) YOUR LORDSHIPS be pleased to direct respondent authorities to take necessary step to show PWD District Offices, Engineer M.R.Suma

Mo:94285 64710, Dy. Engineer R.A.Parmar Mo:9879535943, S.O (Scission Offices) Board Mo:9409311114 and the owner of the company of the

working in this contractors an accused in FIR bearing C.R.No.I-4 of 2019 and initiate action take against him.â??

2. Heard Mr. Gaurang Chauhan, learned advocate for the petitioner and Mrs. Krina Calla, learned APP for the respondent-State.

3. The writ petitioner has filed this writ petition for direction upon the respondent police authority to show the PWD District Officers as an accused

and to take steps against them pursuant to the FIR filed by the Petitioner before the Chalala Police Station and also prayed to transfer the investigation

to any other police station.

4. The grievance of the writ petitioner is that the concerned authority has not taken proper action and therefore, necessary direction to carry out

proper investigation by the concerned authority is required to be given.

5. On the other hand, Mrs. Krina Calla, learned APP appearing for the respondent-State submits that approaching the Honâ??ble High Court by

filing application under Article 226 of the Constitution of India is not a proper remedy. She submits that pursuant to the FIR bearing C.R. No.I-4 of

2019 registered with Chalala Police Station, Dist. Amreli, the petitioner has remedy available under the provisions of the Criminal Procedure Code,

1973. Relying on the case of â??Sakiri Vasu vs. State of Uttar Pradeshâ? reported in (2008) 2 SCC 409, she submits that the Magistrate concerned

can direct for proper investigation.

6. In case of Sakiri Vasu (supra), the Honâ??ble Apex Court has considered this aspect of the matter in paragraph nos.27 and 28 which reads as

under:

â??27. As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation

and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself). The High

Court should discourage the practice of filing a writ petition or petition under Section 482 Cr.P.C. simply because a person has a grievance that his

FIR has not been registered by the police, or after being registered, proper

investigation has not been done by the police. For this grievance, the remedy lies under Section 36 and 154(3) before the concerned police officers, and if that is of no avail, under Section 156(3) Cr.P.C. before the Magistrate or by filing a criminal complaint under Section 200 Cr.P.C. and not by filing a writ petition or a petition under Section 482 Cr.P.C.

28. It is true that alternative remedy is not an absolute bar to a writ petition, but it is equally well settled that if there is an alternative remedy the High Court should not ordinarily interfere.â??

7. In case of â??Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhageâ? reported in (2016) 6 SCC 277, the decision of â??Sakiri Vasu (supra) was followed. In paragraph no.2 of the judgment, the Apex Court has held as under:

â??2. that if a person has a grievance that his FIR has not been registered by the police, or having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not to go to the High Court under Article 226 of the Constitution of India, but to approach the Magistrate concerned under Section 156(3) Cr.P.C. If such an application under Section 156(3) Cr.PC is made and the Magistrate is, prima facie, satisfied, he can direct the FIR to be registered, or if it has already been registered, he can direct proper investigation to be done which includes in his discretion, if he deems it necessary, recommending change of the investigating officer, so that a proper investigation is done in the matter. We have said this is Sakiri Vasu case because what we have found in this country is that the High Courts have been flooded with the petitions praying for registration of the first information report or praying for a proper investigation.â??

8. A caution has been put at paragraph no.3 which reads as under:

â??We are of the opinion that if the High Courts entertain such writ petitions, then they will be flooded with such writ petitions and will not be able to do any other work except dealing with such writ petitions. Hence, we have held that the complainant must avail of his alternate remedy to approach the Magistrate concerned under Section 156(3) CrPC and if he does so, the Magistrate will ensure, if prima facie he is satisfied, registration of the first information report and also ensure an proper investigation in the matter, and he can also monitor the investigation.â??

9. Applying the aforesaid dictum of law in the facts of the present case, the

applicant being a complainant is not satisfied with the progress of the investigation. In this case FIR is already registered before the concerned police station and the informant is not satisfied with the progress of the investigation, then, the remedy lies with the informant to approach the Court concerned in terms of provisions of Criminal Procedure Code, 1973. Thus, when alternative remedy is available to the informant, this Court is not required to exercise its powers under Article 226 of the Constitution of India.

10. Accordingly, the present writ petition stands dismissed with a liberty to the writ petitioner to approach the jurisdictional Magisterial Court concerned by invoking the statutory remedy available under the provisions of the Criminal Procedure Code, 1973. However, it is made clear that this Court has not examined the merits of the case.