

(2020) 12 GUJ CK 0052

In the Gujarat High Court

Case No : R/Special Criminal Application No. 8328 Of 2020

Hitendrasinh Dolatsinh Jadeja

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 23-12-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Code Of Criminal Procedure, 1973 — Section 154, 438, 439, 482

Citation : (2020) 12 GUJ CK 0052

Hon'ble Judges : Dr. A. P. Thaker, J

Bench : Single Bench

Advocate : Keval G Barot, Pravin Gondaliya, Moxa Thakkar

Final Decision : Disposed Of

Judgement

Dr. A. P. Thaker, J

[1] Heard Mr.Keval G. Barot, learned advocate for the petitioners and Ms.Moxa Thakker, learned APP for the respondents through video conferencing.

[2] Rule. Ms.Moxa Thakker, learned APP waives service of notice of Rule on behalf of the respondents. With the consent of learned advocates for both the side, Rule is fixed forthwith.

[3] The present petition is filed by the petitioners for the following reliefs:-

11(A) That the Hon'ble Court may be pleased to admit this petition;

(B) That the Hon'ble Court may be pleased to allow this Special Criminal Application by issuing appropriate writ, order or direction directing

respondents to register the FIR against accused persons pursuance to the complaint given by petitioner at Annexure-A and further be pleased to issue

direction to take appropriate action in accordance with law.

(C) Pending admission, hearing and final disposal of this petition, this Hon'ble Court may be pleased to direct respondents to register the FIR against

accused persons in pursuant to the complaint filed by the petitioner dated 26.08.2020

(D) Grant such other and further relief(s) as deemed just and proper by this Hon'ble Court in the interest of justice.

[4] Larned advocate for the petitioner has vehemently submitted that considering the averments made in the petition as well as documentary evidence, necessary directions be issued to the concerned authority for registration of the FIR. He has prayed to pass necessary orders in this matter.

[5] Ms.Moxa Thakker, learned APP for the respondents has opposed the present petition and urged to dismiss the petition.

[6] The present petition is filed on the ground that the petitioner has filed an application on 26.08.2020 regarding serious offences committed by the

named persons in the said application. It is revealed from the materials that the subject matter is the property situated at Nani Bazar, Dera Street,

Gondal, Dist. Rajkot, Survey Ward No.2 Sheet No.127 and Survey No.338 and 339, which was purchased by the petitioner in the year 2013 as power

of attorney holder of the original owners. The sale deed was executed in favour of the accused person as they happen to be the real brother and uncle

respectively. It is also revealed that during the year 2014 to 2017 the said property was sold by the accused persons without informing and consent of

the petitioner. It is also revealed that in the year of 2019 one MOU came to be executed among the family members of the petitioner and in the

MOU it is clearly mentioned that the said property was purchased by the petitioner from his personal income, and therefore he is the original owner of

the said property. It is also revealed that despite the fact that it was in the knowledge of the accused persons that they have sold the property in the

year 2014, they suppressed such fact in the MOU and they committed cheating with the petitioner. It is further revealed that the investigating officer

has not attended the application dated 26.08.2020 filed by the petitioners.

[7] Now, the law is settled by the Hon'ble Supreme Court in the case of Lalita Kumari Vs. Government of Uttar Pradesh and others, (2014) 2 SCC 1

wherein the Apex Court has observed in paras-120 to 121 as under:-

120. In view of the aforesaid discussion, we hold:

120.1 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.

120.6 As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The

category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes / family disputes;

(b) Commercial offences;

(c) Medical negligence cases;

(d) Corruption cases;

(e) Cases where there is abnormal delay / laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7 While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it

should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

120.8 Since the General Diary / Station Diary / Daily Diary is the record of all information received in a police station, we direct that all information

relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the

said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.

121. With the above directions, we dispose of the reference made to us. List all the matters before the appropriate Bench for disposal on merits.â??

[8] Considering the aforesaid pronouncement of the Apex Court, this Court is of the considered opinion that the some sort of direction is required to be

issued to the police authority for making inquiry of the application.

[9] In that view of the matter, the respondent police authority is directed to look into the application dated 26.08.2020 filed by the petitioner in

accordance with law and if the cognizable offence is made out during the course of inquiry, then, the same be registered as FIR and necessary

investigation may be carried out thereof within a period of four months from today. At the same time, if during the course of inquiry, no cognizable

offence is made out, then, the police authority shall inform in writing to the petitioner accordingly so that petitioner may take appropriate recourse in

accordance with law.

[10] It is needless to say that this Court has not opined about commission of alleged offences and, therefore, it would be open for the suspects or those

persons, who may be made an accused in the FIR, to file an application under Section 438 or Section 439 of the Code of Criminal Procedure Code or

to file appropriate proceedings before appropriate Court including an application under Section 482 of the Code of Criminal Procedure and/or any

petition under Article 226 of the Constitution of India.

[11] With these observations, the present petition stands disposed of accordingly. The Registry is directed to communicate this order by fax, e-mail

and/or any other electronic mode to the concerned Court / Police Authority. Direct service is permitted by email / fax.

[12] The concerned police authority be informed accordingly.