

(2017) 06 GUJ CK 0028
In the Gujarat High Court
Case No : 4464 of 2013

JAKIRMOHAMMED MEMABHAI ATHANIYA & ORS.

APPELLANT

Vs

STATE OF GUJARAT & ANR.

RESPONDENT

Date of Decision : 29-06-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#) - Saving of inherent powers of High Court
[Indian Penal Code, 1860](#), [Section 147](#), [Section 323](#), [Section 149](#), [Section 395](#), [Section 143](#), [Section 504](#), [Section 506\(2\)](#) -
Punishment for rioting - Punishment for voluntarily causing hurt - Every member of unlawful assembly guilty of offence committed in prosecution of common object - Punishment for dacoity - Punishment - Intentional insult with intent to provoke breach of the peace - Punishment for criminal intimidation
[Scheduled Castes and Scheduled Tribes \(Prevention of Atrocities\) Act, 1989](#), [Section 3\(1\)\(10\)](#) - Punishments for offences of atrocities

Citation : (2017) 06 GUJ CK 0028

Hon'ble Judges : Anant S. Dave

Bench : Single Bench

Advocate : ANKIT SHAH, ?KP RAVAL

Judgement

1. This petition is filed under Section 482 of the Code of Criminal Procedure, 1973 with a prayer to quash and set aside FIR dated 12.3.2013 registered with Danta Police Station vide I-C.R.No.22/2013 for the offences punishable under Sections 323, 504, 506 (2), 143, 147, 149, 395 of the Indian Penal Code and under Section 3 (1) (10) of the Atrocities Act.

2. While taking me to the allegations levelled in the complaint, learned counsel for the applicants has stated that petitioner no.1 apprehended that some anti-social elements are likely to hinder or create obstacles in Taluka Panchayat election, which was to be held on 13.3.2013 and addressed a communication to the Election Commission as well as to the concerned police authority and

directions were given accordingly. However, when the petitioners reached the office of Taluka Development Officer, Taluka Panchayat, Danta, around 11.40 a.m. on 12.3.2013 a Member of BJP along with 20 to 25 persons attacked the petitioners and thrown the petitioners out of Taluka Panchayat office and even in the said incidence, PSI, Shri Barad was injured. Rs.5,000/- was snatched away from the pocket of petitioner no.1 and even vehicle bearing registration no.GJ-8-F-7102 was also damaged. The above incident had taken place inspite of police protection provided. The petitioner registered a police complaint against such accused persons being FIR No.21/2013 on the same day with Danta Police Station for the offences under Sections 33, 332, 143, 147, 149 and 427 of the Indian Penal Code. It is the case of the petitioner that he sustained injuries, hence, after registering the above FIR, a letter was addressed for the treatment to be provided to the petitioner immediately. Pursuant to the said incident and after filing the FIR as above,

as a counter-blast and retaliatory measure respondent no.2- original complainant, an active member of BJP and also a member of Taluka Panchayat and a presidential candidate to the post of President, Danta Taluka Panchayat, only with a view to harass and take political advantage filed FIR No.22/2013 around 22.00 hours on 12.3.2013, which is impugned in this petition on various grounds.

3. It is submitted that FIR impugned is malicious, and out of vengeance and to take political advantage, frivolous complaint is lodged. It is submitted that even if carefully perused no ingredients of offence under Section 3 (1) (10) of the Atrocities Act are found in absence of any specific allegation in the complaint. Neither the petitioner has deliberately or intentionally insulted or intimidated the complainant at the place of offence with a view to humiliate and that too at a place with public view. Barring this, allegation of snatching gold chain etc. are made so as to attract offence under Sections 395 of IPC and, therefore, present proceeding being abuse of process of law deserve to be quashed and set aside.

4. In addition to above, affidavit dated 28.9.2016 filed by one Shri Navabhai Lumbabhai Angari is placed on record, wherein it is stated that offences registered qua FIR being I- C.R.No.22/2013 an amicable settlement is arrived at and that is also an additional ground for exercise of powers under Section 482 of the Code of Criminal Procedure.

5. Heard learned APP, who has opposed the prayer to quash and set aside the FIR, on the ground that serious offences are registered against the petitioners, which also include offence

under the Atrocities Act and bare reading of the FIR and allegations levelled therein reveal ingredients of offence and both the complaints need to be investigated. Even application filed for vacating the interim relief was earlier rejected and now final hearing has taken place on merits and the petitioners have no case. Accordingly, he prayed that this application be rejected.

6. Having heard learned advocates for the parties and considering the submissions made by learned advocate for the petitioners, an affidavit dated 28.9.2016 filed by the complainant is nothing but an attempt made by the parties to abuse the process of law and influence this Court so as to exercise the power and investigating agency is precluded from investigating the offences. When one of the petitioner himself made a complaint earlier about serious injuries caused to him and thereafter another version has come on record about commission of offence under Sections 313, 504, 506 (2) 143, 147, 149 and 395 of IPC along with other offences under the Atrocities Act. In absence of any substance in the submissions made by the learned advocate for the petitioners to invoke or exercise the powers under Section 482 of Code of Criminal Procedure, subject matter of FIR needs detailed investigation for which a report will have to be submitted and at the end if the charge-sheet is filed, Criminal Case is to be tried by the competent Court. At this stage, in absence of merits, the petition is rejected. Rule is discharged. Interim relief granted earlier stands vacated with a direction to concerned investigating officer to complete the investigation as early as possible.