

(2001) 05 GUJ CK 0040

In the Gujarat High Court

Case No : Special Criminal Application No. 271 of 2001

Kanaram K. Patel

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 02-05-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Criminal Procedure Code, 1973 (CrPC) — Section 437

Penal Code, 1860 (IPC) — Section 120(B), 406, 420, 465, 467

Citation : (2001) 21 GLH 238

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Advocate : Himanshu J. Mehta, for the Appellant;

Judgement

S.K. Keshote, J.—Heard the learned counsel for the petitioners. By this petition under Article 226 of the Constitution of India, the petitioner is praying for transfer of the investigation of the criminal case in which he is one of the accused to CBI (State) or CID as having apprehension that investigation by Surat Police lacks impartiality and is rather malicious.

2. Learned counsel for the petitioner though made an attempt to state all the facts and raise the contentions on merits of the matter, in view of the order which I propose to pass in this petition, I do not consider it to be appropriate and in the larger interest of the parties to the petition to make reference to all the facts and touch the merits of the matter.

3. It is a scandal of Rs. 1 crore of the bank, i.e. Panchsheel Mercantile Co. Op. Bank Ltd., Surat, and in connection with the same, a criminal complaint would have been filed and the petitioner is one of the accused therein. Only one fact has to be mentioned that the Director General of Police, Gujarat State, transferred the criminal case for investigation from D.G.P., Surat to State CID Crime. Against this order of the D.G.P., Gujarat State, the complainant-bank filed special criminal application No. 1 /9 of 2001. This matter also came up for

hearing before the Court on 23-4-2001. The order aforesaid of the D.G.P., Gujarat State has been withdrawn and accordingly the counsel for the petitioner prayed for withdrawal of the special criminal application aforesaid and the same is dismissed as withdrawn on that date. The petitioner filed Criminal Misc. Application No. 1992 of 2001 in the Special Criminal Application No. 179 of 2001 for its impleadment therein as a party. Simultaneously, another person Shantilal T. Mehta has also filed an application being Criminal Misc. Application No. 206 of 2001 praying therein for impleadment as party in the Special Criminal Application aforesaid, this person is opposing the withdrawal of this Special Criminal Application. As a result of the withdrawal of the Special Criminal Application, the petitioner withdrew the Criminal Misc. Application No. 1992/01 and similarly, the other person, Shantilal has also withdrawn the Criminal Misc. Application No. 206 of 2001 on that date. It is not in dispute that the petitioner filed Criminal Misc. Application No. 7704/2000 before this Court, which came to be decided on 18th January, 2001. In this Criminal Misc. Application No. 7704/00, the petitioner prayed for extension of benefit to him u/s 437 of Cr. P.C., i.e. for anticipatory bail in connection with the C.R. No. 40/2000 registered with the Detective Crime Branch, Surat for the alleged offences under Sections 406, 420, 465, 467, 468, 471, 72, 120 (B) of I.P.C. This is the very criminal complaint, which is the subject-matter of this Special Criminal Application. Before this Court, on that date, in the Criminal Misc. Application No. 7704/2000, the counsel who was appearing for the petitioner had initially submitted that the applicant want to surrender before the trial court and wishes to file an application for regular bail and till then, he cannot be arrested by the police. I find from the order dated 18th January, 2001, in the Criminal Misc. Application No. 7704/2000, that, that application was filed on 20th December, 2000 and on 27th December, 2000, the order was passed directing the police not to arrest the applicant in connection with the aforesaid criminal complaint. The said benefit was extended by an order dated 10th January, 2001. In view of these facts, this Court accepted the prayer made by the petitioner and ordered that the accused, applicant therein, the petitioner herein, shall surrender before the CJM, Surat on 24-1-2001 and may pray for regular bail, which the learned CJM, Surat shall dispose of in accordance with law. It is further ordered that till 24-1-2001, the applicant therein, the present petitioner shall not be arrested by the police in connection with the criminal complaint aforesaid. Copy of this order is available in the file of Criminal Misc. Application No. 1992/01. This order has not been disputed by the learned counsel for the petitioner. On being asked by the Court, learned counsel for the petitioner admitted that in compliance of the order of this Court dated 18th January, 2001, passed in Criminal Misc. Application No. 7704/00, the petitioner has not surrendered before the CJM, Surat on 24-1-2001. Learned counsel for the petitioner submits that the petitioner filed Criminal Misc. Application No. 610/2001 before this Court for modification of that earlier order dated 18-1-2001. The order which has been made by this Court on 25-1-2001, is on the record of the Criminal Misc. Application No. 1992/ 01 and which is not disputed by the counsel for the petitioner. This Court has not ordered for any

modification of its earlier order dated 18th January, 2001. The order of this Court dated 25th January, 2001, reads as under:

"This is an application for modification of the order dtd. 19-1-2001 passed in Criminal Misc. Application No. 7704 of 2000, directing the accused-petitioner to surrender before learned CJM, Surat and if petitioner so desire he may file application for bail which the learned Magistrate shall decide in accordance with law. Similarly, the investigating agency were also allowed to made an application for remand either to police or jail custody of the accused which shall also be decided by Learned Magistrate. Nothing has been placed before me to show that the accused has surrendered before learned CJM. Instead learned counsel for the petitioner submits that the practice of this Court is that in an offence alleged to have been committed for which the punishment is life imprisonment, in that case, the accused should be permitted to surrender before Learned Sessions Judge. I do not agree with the submissions of learned counsel for the petitioner because at the first instance the accused must surrender before learned Magistrate with whom the files are being maintained by the police. Therefore, at this stage, no modification of earlier order is necessary. Accused-petitioner may comply with the order passed by this Court on 19-1-2001. This application is accordingly rejected. "

4. It is clear that the Court has shown further indulgence to the petitioner to comply with its earlier order dated 18-1-2001 but the learned counsel for the petitioner, submitted that the petitioner has not surrendered till date before the CJM. It is submitted that the petitioner has not surrendered before the CJM for the following reasons:

- (i) that the police is not making impartial investigation in the criminal case;
- (ii) the petitioner has endanger to his life;
- (iii) the Courts at Surat are not functioning from 26th January, 2001.

5. During the course of arguments, learned counsel for the petitioner submitted that the Courts are functioning from the month of February, 2001. In the matter where the litigants approached to this Court for grant of relief under its extraordinary equitable jurisdiction, i.e. petition under Article 227 of the Constitution of India, the conduct of the litigant is of utmost important and relevant. Where the conduct of the petitioner is dubious or where it appears, to the Court that the petitioner has not complied with the orders of this Court certainly only on this conduct, the Court may decline to go on the merits of the matter and dismiss the same summarily. In this case, this Court has granted indulgence to the petitioner, which otherwise was not warranted but instead of complying with the order of this Court dated 18th January 2001, in Criminal Misc. Application No. 7704/00, he filed another Criminal Misc. Application before this Court and that too has been dismissed on 25th January, 2001 but still the Court's order has not been complied with. Leaving apart the fact that non-compliance of the order of this Court is a contempt, and for which the Court can

appropriately take action against the petitioner, but so far as this petition is concerned, when the petitioner has not complied with the Court's order, this matter cannot be heard on merits and no relief can be granted to the petitioner. Only on this conduct of not complying with the order of this Court, this petition deserves to be dismissed.

6. A person who seeks indulgence of this Court under its extraordinary equitable jurisdiction has to exhibit himself as a law abiding citizen. If a litigant is not complying with the Court's order, how far it is justified for him to come up for this equitable extraordinary relief from this Court. It is a case where the petitioner has taken the benefit of the order of this Court and enjoyed the anticipatory bail without complying with the order. The petitioner once this Court has not protected him by granting anticipatory bail has to surrender voluntarily and for which no order of this Court was required but in this case as the indulgence as prayed for by the petitioner has not been granted, but the Court has granted relief to him and protected him till 24th January, 2001 so that he may apply for regular bail. But he misused this indulgence granted by the Court and this petition deserves to be dismissed. The reasons given for non-surrendering by the petitioner are only manufactured and concocted one. Even if it is taken that the Courts at Surat are not functioning, the petitioner should have reported this matter to this Court and the Court would have taken care of the circumstance. The very fact that the petitioner has not reported this matter to the Court goes to show that what the learned counsel for the petitioner has given out the justification for non-surrendering of the petitioner in the Court in compliance to the order of this Court, is nothing but only a manufactured and concocted story.

7. In the result, this petition fails and the same is dismissed. It is a fit case where exemplary costs has to be ordered against the petitioner. The petitioner is directed to pay Rs. 2000/- as costs of this petition. This amount of costs of Rs. 2000/- be deposited by the petitioner in the Chief Minister's Gujarat Earthquake Relief Fund within a period of one month from the date of receipt of writ of this order and the receipt of deposit of the amount be produced in the proceedings.

8. The petitioner under the order dated 18-1-01 was directed to surrender before CJM, Surat on 24-1-01 in Criminal Misc. Application No. 7704/2000 and till then he has protected from his arrest. This order was sought to be modified but that application has been rejected on 25-1-01. This order is made in Criminal Misc. Application No. 610/01. The petitioner has to comply with the earlier order of this Court dated 18-1-01 as what it is ordered by this Court. Noncompliance of the order of this Court is certainly contempt of the Court's order and for which the petitioner may be booked and appropriately punished on prove of the same. In the facts of this case, prima facie, I am satisfied that it is a clear case of deliberate and wilful noncompliance of the orders of this Court dated 18-1-01 and 25-1-01 passed in Criminal Misc. Applications No. 7704/2000 and 610/01 respectively. Office is directed to separately open a file under the head "Criminal

Misc. Application in Criminal Misc. Application No. 7704/2000 under the title --
Suo Motu Contempt Application against the petitioner -- Kanaram K. Patel, 202,
Panorama Complex, Nr. Navjivan Press, Ashram Road, Ahmedabad. Rule to the
petitioner to show cause as to why contempt proceedings should not be initiated
against him and he be punished for noncompliance of the order of this Court
dated 18-1-01 in Criminal Misc. Application No. 7704/2000 and the order dated
25-1-01 in Criminal Misc. Application No. 610/01 returnable on 17-7-2001.