

(2014) 09 GUJ CK 0077
In the Gujarat High Court

Case No : Special Criminal Application (Direction-to Lodge Fir/Complaint) No. 3839 of 2014

Kumarpal Dalichandbhai Shah

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 22-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 09 GUJ CK 0077

Hon'ble Judges : R.M. Chhaya, J

Bench : Single Bench

Advocate : P.P. Majmudar, Advocate for the Appellant; Alkesh N. Shah, APP, Advocate for the Respondent

Judgement

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R.M. Chhaya, J.—Heard Mr. P.P. Majmudar, learned advocate for the petitioner and Mr. Alkesh N. Shah, learned APP for the respondent-State.

2. Rule. Mr. Alkesh N. Shah, learned APP waives service of Rule on behalf of respondent- State.

3. Considering the issue involved in the present petition and with consent of learned advocates appearing for the respective parties, this petition is taken up for final disposal forthwith.

4. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for appropriate writ, order or direction directing the respondent authorities to consider the complaint/representation dated 28.2.2014 filed by the petitioner.

5. The learned advocate for the petitioner has submitted that by detailed complaint/representation dated 28.2.2014, the petitioner has approached before the competent respondent authorities. However, the said application is neither

processed nor any decision is taken upon it. Learned advocate for the petitioner, however, relied upon the decision rendered in the case of Lalita Kumari Vs. Govt. of U.P. and Others, , wherein it has been observed thus:-

"(i) 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.

(ii) 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.

(iii) 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.

(iv) 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.

(v) 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.

(vi) 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.

(vii) 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.

(viii) 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."

6. Considering the aforesaid judgment of the Apex Court, the competent respondent authorities are hereby directed to decide the complaint/representation dated 28.2.2014 filed by the petitioner, on its own merits, as expeditiously as possible, in accordance with law and without in any manner being influenced by the present judgment. It is, however, clarified that this Court has not examined the matter on merits.

7. With these observations, present petition stands disposed of. Direct service is permitted.