

(2017) 07 GUJ CK 0020
In the Gujarat High Court
Case No : 2519 of 2013

MUKESH SHASHIKANT PATEL

APPELLANT

Vs

STATE OF GUJARAT & ORS.

RESPONDENT

Date of Decision : 04-07-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs
Code of Criminal Procedure, 1973, Section
202, Section 203, Section 204</
a> - Postponement of issue of process - Dismissal of complaint - Issues of process

Citation : (2017) 07 GUJ CK 0020

Hon'ble Judges : A.Y. Kogje

Bench : Single Bench

Advocate : KAJAL BABARIA, ?HK PATEL

Final Decision : Allowed

Judgement

1. RULE. Learned APP Mr.H.K.Patel waives service
of Rule on behalf of the respondent-State.

2. This petition is filed under Article 226 of the
Constitution of India and relevant provisions of the
Criminal Procedure Code praying as under:-

"12. (A) This Hon"ble Court be pleased to issue a writ of mandamus or any
other appropriate writ, order or direction, and be further pleased to direct the
respondent No.2 and respondent No.3 to forthwith investigate into the
complaint and submit specific report and opinion with respect to the complaint
filed by the petitioner and registered as Criminal Case No.1648/2007 which is
ordered to be investigated by learned JMFC, Vadodara by order dated
18.6.2007.

(B) This Hon''ble Court may be pleased to direct the learned Judicial Magistrate, First Class, Vadodara to investigate into the complaint and decide the same in accordance with law as if Criminal Case No.1648/2007 after investigation report is submitted by respondent Nos.2 and 3, or, alternatively, without any investigation also, decide the Criminal Case No.1648/2007 after taking evidence in accordance with law, on merits of the case;"

3. Learned Advocate for the applicant drew attention of this Court to the order passed by the JMFC, Vadodara on the private complaint filed by the petitioner on 18.06.2007, where the JMFC, First Court, Vadodara had issued order under Section 202 of the Criminal Procedure Code and calling upon the concerned Police Station to submit a report, thus postponing issuance of process.

3.1 Learned Advocate for the applicant also drew attention of this Court to the orders passed by this Court dated 28.02.2013 in Special Criminal Application No.3618 of 2012, wherein this Court had issued specific directions, which are as under:-

"5.1 The registry of the Court of learned Magistrate, where the said Criminal Case No.1648 of 2007 is pending, shall inform the petitioner about the details of the police station where the complaint, order and other case papers have been forwarded for investigation.

If for want of any clarification in the said order, until now, the complaint, order and case papers have not been forwarded to any particular police station for investigation, then, the registry of the Court of learned Magistrate shall take necessary actions forthwith, without causing any delay and immediately forward the complaint as per the order dated 18.6.2007 to concerned police station for investigation within specified time, which should not be more than 30 days.

The details about the concerned police station, where the complaint is forwarded shall be informed to the petitioner.

5.2 The Court of learned Magistrate will also continuously take follow-up actions with reference to the process of investigation and if the investigation is not completed, within time limits specified by the learned

Magistrate, then, the learned Magistrate shall immediately take necessary steps against the concerned police authority, who is in-charge of the investigation.

It would also be open to the petitioner to take out appropriate proceedings, in the event, the investigation is not completed within the specified time limits.

5.3 It is also clarified that if the complaint is already forwarded to a particular police station, then, the said information may also be made available to the petitioner and the Court of learned Magistrate shall take necessary steps to call for report from the concerned police officer of concerned police station, who must also explain the status of the investigation and the reasons for delay in not filing the report."

3.2 Despite the aforesaid position, there is no further development as per the say of the learned Advocate for the applicant. The applicant is therefore entitled to issuance of writ so that remedy which the applicant has sought for before a Court of law comes to a logical conclusion.

4. Learned APP drew attention of this Court to the previous orders passed in this very petition, wherein Registrar of the concerned Court has been noticed to submit a report and also carry out directions contained in the previous orders of this Court in Special Criminal Application No.3618 of 2012.

5. In view of the aforesaid and after perusing the private complaint filed before the Magistrate, this Court is of the view that the allegations made in the complaint do disclose a cognizable offence against the accused persons named in the private complaint.

6. However, at this stage, when the concerned Magistrate Court has also issued an order exercising powers under Section 202 of the Criminal Procedure Code, it would be appropriate to issue direction to respondent No.2 - Commissioner of Police to forthwith comply with the order dated 18.06.2017 passed by JMFC, First Court, Vadodara in Criminal Case No.1648 of 2007, if not

complied with so far. The submission of the report would obviously be subject to the discretion of the Magistrate Court, Vadodara to proceed further as provided under the provisions of the Criminal Procedure Code, i.e. to say under Section 204 of the Criminal Procedure Code for issuance of process or under Section 203 of the Criminal Procedure Code, as the case may be.

7. With the aforesaid, the petition deserves to be and is hereby allowed. Rule is made absolute to the aforesaid extent.

Direct service is permitted.