

(2022) 05 GUJ CK 0018

In the Gujarat High Court

Case No : R/Misc. Civil Application No. 178 Of 2022

Nathiben Lalitbhai Vegada

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 05-05-2022

Acts Referred:

Contempt Of Courts Act, 1971 — Section 10
Indian Penal Code, 1860 — Section 114, 379, 447
Motor Vehicles Act, 1988 — Section 177(2), 181, 207
Code Of Criminal Procedure, 1973 — Section 41

Citation : (2022) 05 GUJ CK 0018

Hon'ble Judges : Aravind Kumar, CJ; Ashutosh J. Shastri, J

Bench : Division Bench

Advocate : Maulik M Soni, KM Antani

Final Decision : ?Dismissed

Judgement

Ashutosh J. Shastri, J

1. By way of this Misc. Civil Application under Section 10 of the Contempt of Courts Act, applicant -Nathiben Lalitbhai Vegada through her sister has approached this Court for initiating contempt proceedings against respondent Nos.2 to 4 for their willful and deliberate disobedience of the directions issued by Hon'ble the Supreme Court of India in the case of D.K. Basu Vs. State of West Bengal reported in AIR 1997 SC 610 and in the case of Arnesh Kumar Vs. State of Bihar reported in AIR 2014 SC 2756 respectively and consequently requested the Court to hold them guilty and punish accordingly.

2. The case of the petitioner is that one Activa vehicle of employee of sister of the applicant was detained by the concerned Traffic police and as such on 27.1.2022, sister of the applicant, named as Ms. Rekhaben, went to RTO office, Rajkot and paid fine of Rs.2000/- and after securing challan from the said office, sister of the applicant had submitted said receipt before Jetpur City Police station and thereby got keys of Activa vehicle bearing registration No.GJ-03 MC-1825

from Mr. Mahipatsinh who is a police officer and later on, sister of the applicant went to police ground with Mr. Saijadbhai and Mr. Faizalbhai by a Verna car at around 8.45 pm. and thereafter, applicant supplied all documents and keys to one Mr. Rajubhai Shamla who is managing the affairs and he informed the sister of the applicant to wait for some time by indicating that 'Sir is coming'. It is the case of the applicant that thereafter, sister of the applicant, i.e. Ms. Rekhaben called present applicant and informed her that, 'you come to police ground and then, we will go to home together' and as such, present applicant is said to have reached the said spot at around 9.15 p.m., where at 9.30 p.m., respondent No.2 namely J.B. Karmur came and without any complaint or any FIR and without any lady officer, at night hours, inflicted fist blow to the sister of applicant and when applicant requested not to beat her sister, i.e. Ms. Rekhaben, Rajubhai and Karmur mercilessly had beaten the applicant as well though they were aware about the fact that she is a minor, using stick and belt brutally, resulting in serious injuries being suffered by applicant. Said officer is said to have used foul language against applicant and others and brought all of them to the police station in a police jeep. Again in the police station, in open space, respondents had beaten in the midnight and when Saijadbhai and Faizalbhai requested the officer not to beat both sisters, then in a double meaning, respondent No.2 used the words, "sister is for you and not for me" and then again, inflicted injury on private part of the applicant and thereafter, at around 4.50 a.m., they called one other sister of the applicant and got thumb mark of the applicant and released the present applicant and her sister. Due to this, applicant got herself admitted to a hospital and her sister Ms. Rekhaben also got medical treatment and later on, applicant came to know that applicant, her sister and Saijadbhai and Faizalbhai were arraigned as accused persons in connection with FIR lodged, bearing No.11213022220126 of 2022 dated 28.1.2022 lodged before Jetpur city Police station, District Rajkot for the offences punishable under Sections 447, 379 and 114 of the Indian Penal Code.

3. The applicant has further stated that she had not trespassed anywhere nor committed any theft nor even can think of breaking lock of vehicle and commit theft in the police station itself as alleged.

4. Applicant has submitted that on account this episode, sister of the applicant, i.e. Ms. Rekhaben, had also approached the higher officers, but they have not taken any steps. Hence, applicant is constrained to approach this Court by way of present contempt petition since there is a gross violation of the mandate of the directions issued by the Hon'ble Apex Court in the case of D.K. Basu and Arnesh Kumar (supra).

5. On notice being issued, the contemnors in compliance of the later order dated 5.4.2022, remained present and through learned Assistant Government Pleader Mr. K.M. Antani, have submitted the chronology of events to point out before the Court that contemnors have not acted in the manner as alleged by the applicant. Such chronology of events since stated on oath, the Court would like to reproduce

the same hereunder:-

2.1 On 25.01.2022, a scooter of make Honda Activa bearing registration no. GJ03MC1825 came to be detained for violating Sections 207, 177 (2) and 181 of the Motors Vehicle Sorathiya Act from one at Jetpur Samir Police Station. For want of space, the detained vehicles are stationed at Police Lines, Jetpur, which area is at a walkable distance from Jetpur Police Station. Copy of detention memo is annexed herewith and marked as "ANNEXURE R-I".

2.2 With respect to the detention of the aforesaid vehicle, the said Samir Sorathiya compounded the offences by paying the fine with the Regional Transport Office, Rajkot on 27.01.2022. The copy of the communication dated

27.01.2022 denoting the said fact addressed Transport Police by the Office, Regional Rajkot Inspector to Traffic Sub Branch/ City/ Taluka is annexed herewith and marked as "ANNEXURE R-II".

2.3 At about 27.01.2022, 20.45 one hours, on Rekhaben Lalitbhai Vegda (Elder sister of applicant) approached the Police Station Officer (PSO), Jetpur Police Station, Shri Mahipatsinh Chudasma for release of Honda Activa bearing registration no. GJ03MC1825 which was detained from Samir Sorathiya. Upon the production of the communication of the Regional Transport Office, Rajkot dated 27.01.2022, issued in the name of Samir Sorathia, the Honda registration no. allowed to be Activa bearing GJ03MC1825 was released to Rekhaben Lalitbhai Vegda. Copy of the station diary entry to that effect is annexed herewith marked as "ANNEXURE R-III".

2.4 At around 22.30 hours approx, on 27.01.2022, respondent no. the present 4 i.e. Rajubhai Chavda, Police Constable, Jetpur Police answering Station, called respondent the informing him that Rekhaben Lalitbhai Vegda was also taking scooter of make possession Suzuki of Access bearing No. GJ 03 LK 9822 which was stationed at Police Lines, and which was detained in connection of an offence lodged as CR-I 11213022211501 for violating the provision of the Prohibition Act. Copy of the said FIR which reflects detention of the said Suzuki Access scooter is annexed herewith and marked as "ANNEXURE R-IV".

At this time the answering respondent was on night patrol owing to prevalent. made the the On night such answering call curfew being respondent reached Jetpur Police Station.

2.5 Since, Rekhaben Lalitbhai Vegda was unauthorisedly possession of the scooter Suzuki Access, taken Station to the Jetpur lodging taking the aforesaid she was Police complaint for against her. In as much as such taking of possession of the scooter from police custody would constitute to be a theft and hence FIR being No. 1121302220126 for committing offences under section 379, 447 and 114 of the Indian Penal Code, was lodged against Rekhaben Lalitbhai Vegdal amongst other. FIR is annexed Copy of the said herewith marked as "ANNEXURE R-V".

At the time when Rekhaben Lalitbhai Vegda came to secure possession of both the vehicles i.e. Access, Honda Active and Suzuki she was accompanied by the present applicant as also one Sefaj Sajidbhai Chuutani and Faizal Karim Jethwa. In FIR being No. 1121302220126 of 2022, the said Sefaj Sajidbhai Chuutani and Faizal Karim Jethwa were also arraigned as accused along with Rekhaben Lalitbhai Vegda.

2.6 Sefaj Sajidbhai Chuutani and Faizal Karim Jethwa were arrested on 23.40 hours whereas, Rekhaben Lalitbhai Vegda was served upon with a notice under Section 41 of the Code of Criminal Procedure. A Copy of the notice under Section 41 issued Lalitbhai upon Vegda the is Rekhaben annexed herewith and marked as "ANNEXURE R-VI". Since, the applicant also accompanied Rekhaben Lalitbhai Vegda, and she being a minor, Kiran Lalitbhai Vegda (also the elder sister of the applicant). was called to the police station and the applicant was handed over to Kiran Lalitbhai Vegda. Copy of the notice of handing over the applicant to Kiranben Lalitbhai Vegda is annexed herewith and marked as "ANNEXURE R-VII".

2.7 Thus, after having followed due process as aforesaid, the applicant Kiranben Rekhaben was handed Lalitbhai Lalitbhai over Vegda Vegda to and was allowed to leave the premises of Jetpur Police Station. CCTV footage of the applicant as also her elder sister Lalitbhai Vegda i.e. Rekhaben. leaving the premise of the Police Station is available with respondent and for the Hon'ble hearing. the can answering be produced consideration of Court at the time this of

2.8 So far as Sefaj Sajidbhai Chuutani and Faizal Karim Jethwa are concerned, they were produced before the jurisdictional Magistrate, where from they were bailed. A copy of the order of bail dated 29.01.2022 is annexed hereto and marked as "ANNEXURE R VIII". At this time it shall arise from the order of the Ld. Magistrate that there is uno discussion much less a finding of these two complained individuals of any having custodial violence much less there being a finding to that effect.

3. It is most respectfully submitted that the aforesaid chronology would indicate that due process of law was followed with respect to the applicant despite the unauthorized acts committed by Rekhaben Lalitbhai Vegda (whom the applicant accompanied) for which FIR being No. 1121302220126 has been lodged. It is most respectfully submitted that an appreciation of the CCTV footage of 27.01.2022 would also that there was neither any injury nor hurt caused to the said Rekhaben Lalitbhai Vegda much less the applicant herein.

It can thus be inferred that there been no violation rendered in of the Arneshkumar has directions [12:22 PM, 4/25/2022] sarthakgupta5800: (supra) or DK Basu (supra) as alleged by the applicant application. in the present

4. It shall be worth bringing to notice Rekhaben makes violation of this Hon'ble Lalitbhai allegations against Court the that Vegda habitually. of the custodial police authorities and one such compliant was made before the Dy. Superintendent of Police, Jetpur Division, Jetpur 27.11.2021. A copy of the on

said complaint is annexed hereto and marked as "ANNEXURE R-IX". Pursuant to the said complaint, a report was filed on 15.01.2022 finding that the allegations made in the said complaint were false and that the said Rekhaben Lalitbhai Vegda had a mental bent of filing frivolous complaints against the police Authorities. Copy of the said annexed report dated herewith 15.01.2022 is annexed herewith and marked as "ANNEXURE R-IX". This event assumes significance for the reason that one of the photograph annexed said complaint matches with with photograph which also forms. to be part of the record of application raising serious doubts about the veracity of the photographs annexed with the present application to justify the allegations made therein.

6. By pointing out the aforesaid events, Mr. Antani, learned Assistant Government Pleader, has drawn the attention of this Court to few Annexures, which are attached to the affidavit-in-reply, and has submitted that an erroneous impression is sought to be created before the Court by the applicant by taking advantage she being a lady. In fact, pursuant to the grievance voiced out by the sister of the applicant, same was examined at length by a senior police officer and upon due inquiry, that applicant's sister has been categorically informed vide communication dated 15.1.2022, reflecting on page 99 that her sister is in the habit of raising very frivolous issues before various offices of administration and by pointing out wrong assertions, time and again, and she is in the habit of making such kind of frivolous applications and therefore, Assistant Police Superintendent of Jetpur had reported to the Police Superintendent, Rajkot (Rural), Rajkot that application/ complaint of Rekhaben Vegada, i.e. sister of the applicant, deserves to be filed.

7. In addition to this, Mr. Antani has drawn the attention of this Court to yet another application dated 27.11.2021 filed by sister of the applicant before Dy.S.P., Jetpur found on page 96 of present case papers and by referring to paragraph 2, he has stated that some persons had made attack on her and as such, by referring to this application, Mr. Antani has submitted that injury certificates and photographs relates to said incident and a serious doubt arises about the assault namely whether said persons are responsible for such injuries sustained by her or it was caused by the police officers as claimed and it is in serious controversy. In fact, according to Mr. Antani, the photographs and injury certificates are not related to the allegations which are mentioned in the application itself. It has further been submitted by Mr. Antani that even persons who have been released on bail, i.e. Mr. Saijadbhai and Mr. Faizalbai, who accompanied the sister and the applicant at the police station on being released on bail, have stated nothing about such assault by the respondents to the sisters before learned Magistrate when produced and there is no material to that extent brought before the Court as well.

8. Apart from that, even looking at the injury certificates which are produced would not reflect the correct position by virtue of which it can safely be inferred that it is only on account of the respondents, said injury had occurred. The

certificates are merely indicating the assault and one certificate of the Government Hospital, Jetpur is indicating that Ms. Rekhaben was brought to the hospital on 28.1.2022 at around 4.30 a.m., whereas the next document is dated 29.1.2022 indicates 4.30 p.m. The date of discharge indicates as 28.1.2022 in one certificate, whereas the date, which is reflecting in the next certificate is 29.1.2022 at 4.30 p.m. Apart from this, yet another certificate, which is reflecting on page 8, depicts the history of injury is on account of collision between two bikes at Jetpur on 28.1.2022 at 5.00 p.m. in the name of Poojaben Vegada and now claimed by applicant Nathiben as her alternate name. However, we find there is no reference at all of such alias name anywhere in the petition having been asserted. This Pooja @ Nathiben even if it is to be taken as it is, then also, version of applicant cannot be accepted as injury is said to have sustained on account of collision between two vehicles. Nothing is stated with respect to the present incident, as alleged in the application and therefore, a serious doubt arises about the version which has been projected before the Court, on the basis of which, according to Mr. Antani, no definite conclusion can be arrived at about the guilt of the respondents.

9. Additionally, learned Assistant Government Pleader Mr. Antani has submitted that Ms. Rekhaben- sister of the applicant Nathiben is a lady, having several criminal antecedents in the area. By submitting a chart, Mr. Antani has given particulars of the criminal history of Rekhaben and thereby has indicated that Rekhaben is an accused in 19 offences, at Jetpur and majority offences are the offences related to Prohibition Act and this is the activity of Rekhaben who is sister of Nathiben and as such, on the basis of such kind of conduct also, according to Mr. Antani, no steps be taken against the respondents when their alleged conduct is not clearly established.

10. It has further been submitted that grievance of the petitioner is relating to non-compliance of mandatory directions issued by the Hon'ble Apex Court and this issue was taken up very seriously even by the authorities and CCTV footage was also taken of 27.1.2022 and found such incident having not taken place. In fact, CCTV footage has been attached with the original record and brought before the Court for perusal. According to Mr. Antani, CCTV footage of 27.1.2022 does not indicate either any hurt caused to said Rekhaben or Nathiben nor indicate anything by virtue of which, it can be inferred safely that none of the injuries found on them has been inflicted by these respondents, who are responsible police officers, and as such according to Mr. Antani, this is nothing but a serious attempt made by sister of the applicant to misguide the Hon'ble Court and to deflate the morale of the police officer and with the background of 19 offences related to Prohibition, Mr. Antani has submitted that applicant has abused the process of law by bringing such kind of frivolous application and hence he has prayed that with exemplary costs, application be dismissed.

11. Having heard the learned advocates appearing for the parties and having gone through material produced on record, it appears that incident in question is

alleged to have occurred on account of the vehicle of the employee of sister of the applicant being detained by the concerned traffic police officer. From the assertion made by the petitioner herself, that one Activa two-wheeler was detained by the traffic police officer, as a result of which, on 27.1.2022, sister of the applicant, i.e. Rekhaben, went to Rajkot RTO, paid an amount of Rs.2000/- by way of fine and after obtaining the challan went to Jetpur City Police station, secured the keys of said Activa, bearing Registration No.GJ-03 MC 1825, then said sister went to the police ground in Verna car with Mr. Saijadbhai and Mr. Faizalbai at around 8.45 p.m. and thereafter, one Rajubhai Shamla, who was managing the affairs at that point of time, asked the sister to wait for some time and then, alleged incident of beating took place in which the sister as well as the applicant both were injured and got medical treatment according to petitioner. Simultaneously, First Information Report was also lodged on 28.1.2022 against the applicant as well as sister Rekhaben and those two persons, named Saijadbhai and Faizalbai, being C.R. No. 11213022220126 of 2022 before Jetpur Police Station. Now, narration of the alleged incident, which allegedly took place on 28.1.2022 in the early hours, sister Rekhaben got treatment at Government Hospital, Jetpur at 4.00 a.m. Page 6 and 7 documents related to Government Hospital, if looked into and compared with the document of Sanjivani Multi-purpose Specialty Hospital, it would disclose it is an injury certificate relating to one Poojaben Vegada, who is now stated to be alias Nathiben, i.e. applicant. It also discloses that she has been admitted to the hospital on account of the assault. In the column "History", it has been recorded as collusion between two bikes at Jetpur on 28.1.2022. In fact, the allegations which have been leveled by Rekhaben against Police Inspector, Jetpur Police Station has been examined by superior authority and upon due inquiry, a report is submitted by the police officer, which is found on page 99, revealing that sister of the applicant Ms. Rekhaben Vegada is in habit of making such frivolous applications time and again and creating story and also in the habit of disturbing the administration of the police department. Report also discloses that to keep the police officials busy, such frivolous applications are being filed. This has been specifically reported in the said communication dated 15.1.2022. Keeping in view of conflicting versions coming from medical records, there is hardly any reason to rely upon the allegations leveled in the petition.

12. In fact, from the material on record and the affidavit-in-reply which has been filed by respondent No.2, said sister of the applicant Rekhaben had unauthorizedly attempted to take possession of one another vehicle viz. Suzuki Access or in other words wanted to secure possession of two vehicles, i.e Honda Activa and Suzuki Access by tendering one receipt, which had been intercepted for traffic violation offence as well as prohibition offence respectively. It has been stated on oath that sister of applicant Ms. Rekhaben Lalitbhai Vegada is having a criminal history and as many as 19 criminal cases are pending against her. A tabular chart has been placed on record by learned Assistant Government Pleader, which this Court deems it proper to reproduce hereunder:-

Srl No.

C.R. No.

Sections

Date and time of declaration of offence

1

Jetpur City Police Station Prohibition C.R. No.5093/2018

65(E) of the Prohibition Act

24.02.2018

20.20 hours

2

Jetpur City Police Station Prohibition C.R. No.5184/2018

65(E), 81 of the Prohibition Act

03.04.2018

20.40 hours

3

Jetpur City Police Station Prohibition C.R. No.5065/2018

65(E), 81 and

98(2) of the Prohibition Act

04.02.2018

17.45 hours

4

Jetpur City Police Station Prohibition C.R. No.5089/2018

65(E), 98(2) of

the Prohibition Act

22.02.2018

13.20 hours5

5

Jetpur City Police Station Prohibition C.R. No.5555/2019

65(E), 81 of the Prohibition Act

06.08.2019

14.35 hours

6

Jetpur City Police Station Part-C

C.R. No.11213022200075/20

65(a)(e), 116(b),

81 of Prohibition Act

18.02.2020

15.30 hours

7

Jetpur City Police Station Part-C

C.R. No. 11213022201059/20

65(a)(e), 81 of Prohibition Act

07.06.2020

19.45 hours

8

Jetpur City Police Station Part-A

C.R. No.11213022201426/20

323, 294(B), 114,

506(2) of the I.P.C.

17.08.2020

19.30 hours

9

Jetpur City Police Station Part-C

C.R. No.11213022201749/20

65(a)(e), 81 of Prohibition Act

21.11.2020

20.10 hours

10

Jetpur City Police Station Part-

C.R. No.11213022201900/20

65(a)(a), 81 of Prohibition Act

29.12.2020

21.00 hours

11

Jetpur City Police Station Part-C

C.R. No.11213022210707/21

65(a)(a), 81 of Prohibition Act

01.01.2021

20.55 hours

12

Jetpur City Police Station Part-C

C.R. No.112130222

65(a)(a), 81 of Prohibition Act

06.01.2021

20.30 hours

13

Jetpur City Police Station

65(a)(a) of the

03.11.2021

Part-C

C.R. No.112130222142/21

Prohibition Act

20.15 hours

14

Jetpur City Police Station Part-A

C.R. No.11213022211517/21

323, 294(b),

506(2), 114 of

the I.P.C. and 135 of the G.P. Act and 3(1)(R), 3(2)

(5-A) of the Atrocity Act

21.11.2021

21.30 hours

15

Jetpur City Police Station Part-C

C.R. No.11213022211537/21

65(a)(a), 81 of Prohibition Act

25.11.2021

20.05 hours

16

Jetpur City Police Station Part-C

C.R. No.11213022211539/21

65(E), 81 of

Prohibition Act

25.11.2021

20.30 hours

17

Jetpur City Police Station Part-A

C.R. No.11213022211540/21

294(b), 506(2),

114 of I.P.C. and 135 of G.P. Act and 3(1)(R) (S),

3(2) (5-A) of the Atrocity Act

25.11.2021

20.45 hours

18

Jetpur City Police Station Part-C

C.R. No.11213022220074/22

65(a)(a), 81 of Prohibition Act

19.01.2022

18.15 hours

19

447, 379, 114 of the I.P.C.

28.01.2022 00.05 hours

13. It has been further found from the affidavit that the grievance about the alleged incident was also examined by the higher authority and for arriving at such conclusion, even CCTV footage of 27.1.2022 has also been considered by the authority in which it was found that there was neither any injury nor any hurt caused to said Rekhaben Lalitbhai Vegada, much less the present applicant and as such, probability of being injured in vehicular collusion, cannot be ruled out, as found from the medical certificate of the applicant. Said certificate at Page 8 of the petition compilation is the history, reflecting collusion between two bikes at Jetpur. Hence, we are of the view that the version put up by the petitioner is not possible to be accepted as truth.

14. From the stand taken by the authority, sister of the applicant namely Ms. Rekhaben Lalitbhai Vegada was also served with a notice under Section 41 of the Code of Criminal Procedure and applicant Nathiben, being minor, was handed over to Kiran Lalitbhai Vegada, another sister, and at the very same time, Rekhaben was also allowed to go, which fact is also noticed from the CCTV footage. One more additional fact which we cannot ignore is the fact that sister of the applicant Ms. Rekhaben was accompanied by two other persons namely Mr. Saijadbhai and Mr. Faizalbhai, who had released on bail, and upon specific query being raised, it has been pointed out in reply that said two persons have not pointed out to any authority about occurrence of any such incident. On a conjoint reading of the assertion made by respondents in their reply affidavit coupled with the documents as well as stand taken by the authority, we are of the concerned opinion that it is not possible for this Court to arrive at a definite conclusion that alleged act which has been attributed against the officers can be construed as having occurred. The report submitted by the senior officer to the concerned Superintendent of Police of Rajkot, CCTV footage of 27.1.2022 and history given while taking treatment would not inspire any confidence in this Court to accept the version put forth by the petitioner. As a result, we are not inclined to entertain the present contempt proceedings as no definite case is made out by the applicant. This is more so when there is a clear report about habitual conduct of Ms. Rekhaben of making such kind of frivolous applications time and again to keep the police officer busy in such kind of applications and having a track record of several prohibition offences, 19 in numbers, pending against applicant's sister, we deem it proper not to encourage such stand of the applicant. Hence, in absence of any definite material, we are not inclined to exercise contempt jurisdiction.

15. It is trite law that initiation of contempt proceedings is a serious step; same cannot be exercised in a routine manner. Unless there is a definite material and clear case made out, this Court would refuse to exercise contempt jurisdiction. In

case on hand, no clear case appears to have been made out to safely conclude that acts of the respondents would amount contempt. Hence, in the absence of any positive material, we are not inclined to entertain the present application. No-doubt, the proposition canvassed by the Hon'ble Apex Court is salutary, must be observed strictly but, the case on hand is reflecting no definite violation. Hence, we deem it proper not to encourage the present stand of the applicant and in the peculiar background of facts, present Misc. Civil Application stands DISMISSED with no order as to costs. Notice is discharged.