

(1998) 03 GUJ CK 0001

In the Gujarat High Court

Case No : Special Civil Application No. 319 of 1997

Samji Ladha and Others

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 09-03-1998

Acts Referred:

Commissions of Inquiry Act, 1952 — Section 2(1), 2(2), 3, 5
Constitution of India, 1950 — Article 142, 226
Penal Code, 1860 (IPC) — Section 114, 302, 386

Citation : (1998) CriLJ 2746 : (1998) 3 GLR 533

Hon'ble Judges : Kumaran Sreedharan, C.J.; Anil R. Dave, J

Bench : Division Bench

Advocate : Arun H. Mehta, for the Appellant; Patel, for Govt. Pleader of Nos. 2, 3, 4 and 5, for the Respondent

Judgement

K. Sreedharan, C.J.—Rule Service of rule is waived by learned Govt. Pleader Mr. Prashant G. Desai for the respondents.

. The petitioners claim to be office bearers of an organisation called Action Committee for Prevention of Police Atrocities. They have approached this Court, it is claimed, to uphold rule of law and for ensuring democratic functioning of all the organs of the State with special emphasis to see that the Police Authorities do discharge their functions and duties in accordance with the constitutional mandate. It is their case that the police under the stewardship of Shri Satish Verma, District Superintendent of Police, Porbandar, resort to fake encounters to liquidate the people after characterising them hard-core criminals. In this Special Civil Application the petitioner's claim that one Jasu Gagan Shial, Ranmal Ram and Naran Devshi were murdered by the Police and made it appear that it were either on account of police using fire arms in self defence or by their committing suicide. Jasu Gagan Shial was killed by the Police in a fake encounter. The story put forth by the Police is that Shial tried to run away from the police when he was about to be arrested. He used his fire arms to kill/scare away the police and then he was shot at and that resulted in his death. This story is clearly false. On

account of death of Shial entire people of Porbandar voiced their protest which led to an enquiry by the Sub- Divisional Magistrate. That enquiry is not a judicial enquiry and that was an attempt to pacify the people of the locality. Enquiry by the Sub Divisional Magistrate as ordered by the District Magistrate and Collector was to cover up the misdeeds of the police in causing death of Jasu Gagan Shial. Ranmal Ram was taken into police custody, in connection with Kutiyana Police Crime Register No. 11/28/95. He was in police custody on remand till 9-1-1996. During the said period he was killed in an encounter with police. One Naran Devshi, who was in police custody on remand is alleged to have ran away from the lockup and committed suicide by hanging himself from a tree near the Police Station. On the basis Of these instances the petitioners pray for appointng a high ranking judicial officer to enquire into the custodial deaths, encounter death's and illegal detentions at the hands of the police and to take action on the basis of the report of that officer.

2. On behalf of the State an under Secretary to Government in the Home Department filed affidavit dated 1-12-1997. The arguments made therein are to the following effect :

(a) Jasu Gagan Shial was accused in many cases and was absconding. He was involved in offences punishable under the Arms Act, Narcotic Drugs and Psychotropic Substances Act, Indian Penal Code and Terrorist and Disruptive Activies (Prevention) Act. He was in the habit of destroying evidence. He has been generally ac quitted for want of evidence by Courts of law. After production of other accused before the Courts of law and completion of trial and acquittal of co-accused, he used to present himself before the police. This practice made it easier for him to get acquittal in almost all cases. A raid was arranged for arresting him on getting information by the D.S.P. Porbandar. It was known that Shial had taken shelter at the residence of one Premji Shamji Kharva. During the raid on 2-12-1996 Shial tried to run away from the residence of Premji Shamji Kharva. Shial used fire arms against police officers. Police after giving warning shot at him. That resulted in his death. The incident took place only because Shial tried to run away from the police to avoid arrest, has used fire arms against police and that police had to return gun shot. The Sub Divisional Magistrate conducted an enquiry into that incident and found no illegality in the police using force. The report of the Sub Divisional Magistrate is based on evidence recorded in the enquiry. The conclusion reached by the Sub Divisional Magistrate was that Shial died in police encounter because while running away from the house of Premji Shamji Kharva he fired at the police and in self defence fired at him and that resulted in Shial's death.

(b) Aher Ranmal Ram was in judicial custody at Junagadh District Jail in connection with the offences registered at Kutiyana Police Station in crime Register No. II/85/95 registered under the Arms Act and the TADA Act. He was remanded till 8-1-1996. Police had to recover fire arms and ammunitions which was kept concealed by accused. For effecting recovery accused was taken to the

residence of Naran Jesti Bandhiya. From there 12 bore cartridges and a gun of 12 bore were recovered. Thereafter at the instance of accused the police took him to the residence of his brother-in-law. He tried to open a wooden box. Immediately on opening it he picked out a pistol and fired twice at Mr. S.H. Jhala, Police Sub Inspector. Mr. Jhala sat down and saved himself from the bullets. Police Sub-Inspector Mr. K.N. Patel, who was assisting Mr. Jhala fired at Aher Ranmal Ram. As a result of the bullet injuries Aher Ranmal Ram expired. The Sub Divisional Magistrate enquired into this incident and opined that police had to use force in self defence.

(c) Aher Naran Jesti Bandhiya was arrested in connection with Crime Register No. 11/28/95 registered at Kutiyana Police Station for offences punishable under Arms Act and TADA Act. On his arrest on 24-1-1996 he was produced before the Executive Magistrate, Porbandar on 25-1-1996, He was remanded to police custody till 29-1-1996. Thereafter an offence was registered at Kutiyana Police Station bearing Crime Registrar No. 1/4/1996 under Sections 386 and 114 of the Indian Penal Code. In that case Aher Naran Jesti Bandhiya was second accused. The police asked for ten days' remand from the JMFC, Porbandar. Thus, he was taken into police custody for the period upto 31-1-1996. He was taken to Kutiyana. On reaching Kutiyana under the excuse of passing urine he gave a push to the head constable and ran away from the police custody. Attempt to arrest him did not succeed. Next day morning i.e. on 30-1-1996 one Maher Khara Savdas reported to Kutiyana Police Station about suicide of an unknown person by hanging from a banyan tree standing in his farm. On reaching the spot the police found the dead body of Aher Naran Jesti Bandhiya hanging from a tree. Thus after running away from the police custody on 29-1-1996 Aher Naran Jesti Bandhiya committed suicide. Enquiry into the case of death was conducted by the Sub Divisional Magistrate, Porbandar. On the basis of the evidence recorded by him he came to the conclusion that Aher Naran Jesti Bandhiya committed suicide after running away from the police custody.

3. The deaths of three persons mentioned above were subject matter of an enquiry by the Sub Divisional Magistrate. The Enquiry Officer found the police not liable for their deaths. Therefore, there is no reason for this Court to invoke extraordinary jurisdiction under Article 226 of the Constitution of India.

4. Jasu Gagan Shial, as per the affidavit filed in reply on behalf of the State, was involved in many criminal cases. He successfully avoided arrest in many of those cases. Co-accused were tried and they were acquitted. After the acquittal of co-accused Jasu Gagan Shial surrendered to police. In the trial which ensued he also got acquittal. While so, it is said that he was involved in Crime Register Nos. 11/91/95 and III/153/95 of Kirtimandir Police Station, Crime Register No. I/165/94 of Kamalabaug Police Station and Crime Register No. II/3/94 of Ranavav Police Station. Crime Register No. I/165/94 of Kamubaug Police Station was in relation to offence punishable u/s 302 of the Indian Penal Code as well. While so, it is said that the District Superintendent of Police got information that

accused is hiding in the residence of Premji Shamji Kharva. The D.S.P. then arranged for raiding the premises for apprehending the accused. On seeing the police accused tried to run away. Not only that he wanted to escape, he fired at the police officers. No police officer was injured. In self defence a police officer fired at him which resulted in his death. This story has been found to be correct by the Sub Divisional Magistrate, who enquired into the incident.

5. The post mortem Certificate issued by the Doctor, who conducted autopsy on the dead body of Jasu Gagan Shial found entry wound caused by fire arm "blackened." If Jasu Gagan Shial was running away to save himself from police, he could not have been close to the fire arm from which the shot was fired causing entry wound. An entry wound could have caused blackening only if the muzzle of the fire arm happened to be close to the body. The skin surrounding the entry wound will be blackened by smoke and unburnt powder as a result of the closeness of the muzzle of the fire arm to the body. The treatises on medical jurisprudence bear sufficient proof of this fact. This casts a serious doubt on the story put forth by the police. The Sub Divisional Magistrate in the enquiry conducted by him regarding the cause of death of Shial did not advert to this aspect of the matter. According to us, the enquiry officer did not approach the issue in the proper perspective taking into consideration all relevant aspects.

6. As per the affidavit filed in reply, Aher Naran Jesti Bandhiya, who kept fire arms in different places took the police for effecting recovery. While taking out the fire arms, it is said that he fired at a police officer. The police officer saved himself from the bullets. The Police Inspector, who was by the side shot at the accused which proved fatal. This story of the accused using fire arms against the police officer, who took him to effect recovery and the police firing in self defence appears to be too artificial. In the ordinary course, if accused shot at the police officer who was in point blank range must have caused injury to the police officer. In spite of two shots at the instance of the accused the police officer did not sustain any injury. This is too difficult to believe. The Post-mortem Certificate issued by the Doctor on examining the body of Aher Naran Jesti Bandhiya was not made available to us. On the materials now placed before us it is difficult for us to believe the version given by the police. It requires further probe into it.

7. It is the case of the State that Aher Ranmal Ram ran away from police custody and committed suicide by hanging himself from a banyan tree. It is stated that on the pretext of passing urine he gave a push to the head constable and ran way way from police custody. According to the affidavit sworn by the Under Secretary to Government, accused committed suicide by hanging from a tree. This appears to be a cock and bull story. The details of the police where the dead body was found hanging from the tree and the Post-mortem Certificate issued by the Doctors have not been produced before us. In the absence of such material, on the facts and circumstances of this case, we are not inclined to accept the version given by the respondents.

8. The three cases of death mentioned above cast some doubt in our mind

regarding the circumstances which led to the death of M/s. Jasu Gangan Shial, Aher Naran Jesthi Bandhiya and Aher Ranmal Ram.

9. The petitioners want this Court to order an inquiry by high ranking judicial officer and to take further action pursuant to the report of that officer. No Act or decision of any Court enables this Court to order of judicial enquiry into the atrocities alleged to have been committed by the police and to pass consequential orders or directions. The Commissions of Inquiries Act allows the Government to appoint Commission of Inquiry for making an enquiry into any definite matter of public importance. Such a power is not available to the High Court while exercising powers under Article 226 of the Constitution of India. As per Section 3 of the Commissions of Inquiries Act, the appropriate Government has got the discretion to appoint a Commission. What the Section says is that the appropriate government may, if it is of opinion that it is necessary so to do, appoint a Commission of Inquiry. The appropriate Government is the best judge to decide whether an inquiry is to be ordered. A very wide discretionary power has been conferred on the appropriate Government. The high authority: namely, the Government is the repository of this wide discretion. The power that is given to the Government does not confer any corresponding benefit on any individual. In other words, no-corresponding right has been conferred on any one to call upon the Government to have an enquiry conducted into any situation. In such a situation, this Court cannot direct the Government to appoint a commission to go into the alleged police atrocities that took place in Porbandar or into the circumstances which led to deaths of three individuals mentioned hereinbefore.

10. Now the question that arises for consideration is whether this Court can direct the Central Bureau of Investigation (CBI) to investigate into the circumstances which led to the death of three individuals mentioned earlier. The relevant statute is the Delhi Special Police Establishment Act, 1946. u/s 2(1) of that Act the Central Government may constitute special police force for an investigation into the offences notified u/s 3 of that Act in any Union Territory. Section 2(2) of that Act states that subject to any order which the Central Government may make in this behalf, the State Police Establishment shall have powers of investigation and arrest as specified therein. Section 3 of the Act enumerates the offences to be investigated. Section 5 of that Act states that the Central Government may by order extend the Act to any area in a State, etc. as stated therein. These provisions thus confer on the Central Govt. to have various investigations made for the purposes permitted therein. The Act thereby confers powers on the Central Govt. and these powers are not coupled with any duties towards any person. Hence no mandamus can be issued directing the Government to exercise its powers or discretion in a particular manner. The learned counsel representing the petitioners did not advance any argument that this Court has got the power to direct the CBI to hold any enquiry invoking the powers under Article 226 of the Constitution of India. The learned counsel appearing for the petitioners brought to our notice decisions of the Supreme Court wherein the CBI was directed to investigate into certain matters. Those

decisions cannot be of any assistance to us.

The Apex Court gave those directions to the CBI invoking the powers under Article 142 of the Constitution of India. This Court is not clothed with such a power. So, we hold that it is not open to the High Court to direct the CBI to enquire into the circumstances which lead to death of the three mentioned above or on the atrocities committed by police under the orders of the DSP Shri Satish Verma.

11. From the materials now placed before us the version of the police regarding death of Jasu Gagan Shial does not appear to be correct. In such a situation his death may be an offence punishable under the Indian Penal Code. Likewise the circumstances which led to the death of other two individuals mentioned hereinbefore also may amount to offences punishable under the Indian Penal Code. The High Court while exercising the power under Article 226 of the Constitution of India, in a case where the allegation leads to commission of criminal offence, can direct the police force of the State to perform its legal duty to investigate the offences. When it is seen that the circumstances which led to the death of three individuals mentioned hereinbefore are such that it may lead to commission of an offence by someone, this Court can direct the police to investigate into those circumstances. It cannot be disputed that investigation of an offence exclusively belongs to the police. It is the duty of the investigating officer to identify the accused, collect all necessary evidence to prove the offences and to bring the accused to trial. On the filing of the charge-sheet, if there is sufficient material to proceed against the accused, the Court is to take cognizance of the same and to try the accused in accordance with law. It is not for this Court to make any enquiry to identify the accused nor is it the duty of this Court to collect evidence.

12. Now the question that arises for consideration is whether a case should be registered for the police to investigate into the circumstances which led to the commission of an offence. Even without registering a case it is open to the police officer to collect information containing details about occurrence so that he can consider whether cognizable offence has been committed warranting investigation thereto. Reference may be made to *Tapinder Singh Vs. State of Punjab* and *Another, , Soma Bhai Vs. State of Gujarat, , State of U.P. Vs. P.A. Madhu, and Binay Kumar Singh and others Vs. State of Bihar, .*

13. In the circumstances detailed above we direct Shri Hiralal, Special Inspector General of Police, C.I.D. Crime, Gujarat State, to investigate into the circumstances which led to the death of M/s. Jasu Gagan Shial, Aher Ranmal Ram and Aher Naran Jesti Bandhiya and in case if he considers that cognizable offences have been committed warranting further investigation thereto, he may do the same in accordance with law and bring the accused to trial. On compelling the investigation he will have further follow up action also in accordance with law. Any observation made in this judgment should not influence the investigation in any manner. We direct the Special I.G.P. to complete the

investigation/enquiry as expeditiously as possible at any rate within six months from the date of receipt of a copy of this judgment.

Rule is made absolute in the above terms.