
(1999) 03 GUJ CK 0044

In the Gujarat High Court

Case No : Special Criminal Application No. 720 of 1998

State of Gujarat

APPELLANT

Vs

Hasubhai @ Hamendra Prabhudas Patel

RESPONDENT

Date of Decision : 12-03-1999

Acts Referred:

Penal Code, 1860 (IPC) — Section 120(b), 406, 409, 420, 467

Citation : (1999) 03 GUJ CK 0044

Hon'ble Judges : R.P. Dholakia, J

Bench : Single Bench

Advocate : K.P. Raval, app, for the Appellant;

Judgement

R.P. Dholakia, J.—The petitioner-State has preferred this Special Criminal Application against the order passed by the Addl. Sessions Judge, Vadodara on 4-4-1998 in Criminal Revision Application No. 67 of 1998.

2. It is the say of the prosecution that offences punishable under secs. 420, 406, 409, 467, 468 and 120(b) of IPC were registered against the present respondent at Padra Police Station being Crime Register No. 8 of 1998. Thereafter, on 6-3-1998 accused was arrested. It is further say of the prosecution that after arrest of the respondent-accused, Investigating Officer has submitted an application for Police custody of the accused before the Court of learned J.M.F.C., Padra on 7-3-1998 and respondent-accused was remanded to Police custody till 10-3-1998 upto 5 p.m. On completion of said period, Investigating Officer has submitted application before the Court of learned J.M.F.C. on 10-3-1998 praying for further custody of the respondent-accused. The learned J.M.F.C., after hearing, rejected the said application. Being aggrieved by the said order passed by the learned J.M.F.C., prosecution preferred Criminal Revision Appln. No. 67 of 1998 before the Court of learned Addl. Sessions Judge, Vadodara which was also rejected on 4-4-1998 against which, the present Special Criminal Application is filed on 10-8-1998.

3. I have heard learned APP, Mr. K.P. Raval for the State. It seems from the record and proceedings that application for further Police custody of the accused was rejected by the learned J.M.F.C. on 10-3-1998. Against that, Criminal Revision Application No. 67 of 1998 preferred by the State before the Sessions Court at Vadodara has been rejected by the Sessions Court on 4-4-1998. Against the said order, State has preferred present Special Criminal Application on 10-8-1998 which shows that prosecution has taken four months' time travelling from Baroda to Ahmedabad, that too in a case of Police custody of the accused in a serious case which is most urgent and is required to be done as expeditiously as possible. It appears that application for certified copy was given on 6-4-1998, i.e. after two days. Certified copy was ready on 10-7-1998 and delivery of the said copy was obtained by the Public Prosecutor's Office, Vadodara on 14-7-1998. It shows that Public Prosecutor's office has not taken any care in getting the certified copy as early as possible. Even Sessions Court has also not supplied the copy in time which ought to have been done looking to the nature of prayer made in the criminal revision application. It also appears from the record and proceedings that both Public Prosecutor's office and Sessions Court situated at Vadodara have remained negligent for the reasons best known to them. Therefore, it has not reached the High Court well in time. Even though the present petition was filed on 10-8-1998, Public Prosecutor's Office, High Court of Gujarat, has not taken any care in filing the urgent note till it was circulated by the Criminal Branch for regular admission. The same remained unattended in the Public Prosecutor's office for a period of more than six months and obviously, when it has come for hearing before this Court, it took practically one year. So, practically it has become infructuous. But facts remain that the Court could not pass any order in the matter because it has become infructuous as investigation is already over. If this will be the approach of the investigating agency and in turn, the Public Prosecutor's office at district level, thereafter at High Court level or the Legal Department, then filing of this type of petition in the Court is of no use and it is not advisable to spend money on dead proceedings. If at all they are interested in right approach, then they should run fast and submit urgent note in the matter. Private parties are putting urgent notes in matters which require urgency and moving before the Court as expeditiously as possible. Same facilities are also available to the prosecution, but they are not utilising the same and merely filing the petition because it has been directed them to do so. Just for the purpose of eye wash, prosecution files petitions which are becoming infructuous at the time when the same were filed and came up for hearing by not taking care in time by the concerned persons. It is nothing but a mechanical approach adopted by all concerned including the Legal Department and, therefore, some appropriate steps are required to be taken. Without that, filing these types of petitions is a waste of public money and injustice to a victim because the fate of the victim has been handed over in the hands of prosecution and, therefore, prosecution should be more careful. When the prosecution, on which trust is imposed, does not act accordingly, it is a breach of trust on its part. I must make clear at this stage that the learned Addl. Public Prosecutor

appearing in this matter has no role in this matter because it has been filed by the office of prosecution since long and it was their duty to draw the attention of the learned Addl. Public Prosecutor.

4. It is established from the record that in this urgent matter, certified copy was not made available to the prosecution for a period of three months. When the facilities of computer and xerox machines are now-a-days available to the District Courts, why this much of delay has occurred in providing the certified copy in such a serious matter. It is required to be enquired at their end so that in future, this kind of incident may not repeated and people may get certified copy in these types of cases as early as possible. Therefore, I direct the District and Sessions Judge, Vadodara to hold an enquiry to that effect and if anybody is found negligent, then take necessary action against the concerned person under intimation to this Court. District & Sessions Judge, Vadodara is also directed to submit his explanation for causing such a gross delay of three months in giving the certified copy in this matter of serious nature.

5. Office is directed to send copies of this order to the Legal Department and Home Department for the purpose of doing the needful in the matter to see that in future, in these type of matters, everybody should take decision well in time so that proper justice can be done.

6. In view of the above, I do not find it necessary to interfere with the order passed by the Court below on merits as it has become infructuous. This petition stands disposed of accordingly.