

(2017) 09 GUJ CK 0048
In the Gujarat High Court
Case No : 2486 of 2012

THAKAR ARVINDBHAI DASHRATHLAL

APPELLANT

Vs

STATE OF GUJARAT & ANR

RESPONDENT

Date of Decision : 22-09-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#) - Saving of inherent powers of High Court
[Indian Penal Code, 1860](#), [Section 114](#),
[Section 397](#), [Section 34](#), [Section 147](#), [Section 148](#), [Section 149](#), [Section 395](#), [Section 504](#), [Section 341](#), [Section 507](#), [Section 506\(1\)](#), [Section 120-B](#) - Abettor present when offence is committed - Robbery or dacoity, with attempt to cause death or grievous hurt - Acts done by several persons in furtherance of common intention - Punishment for rioting - Rioting, armed with deadly weapon - Every member of unlawful assembly guilty of offence committed in prosecution of common object - Punishment for dacoity - Intentional insult with intent to provoke breach of the peace - Punishment for wrongful restraint - Criminal intimidation by an anonymous communication - Punishment for criminal ,intimidation

Citation : (2017) 09 GUJ CK 0048

Hon'ble Judges : Biren Vaishnav

Bench : Single Bench

Advocate : MITA S PANCHAL, IM PANDYA, RITESH B DAVE, CHINTAN DAVE

Judgement

1. This application is being filed by the petitioner challenging the lodging of an FIR against him. Against the petitioner, I.CR No. 74 of 2012 has been registered on 18.05.2012 at Langhnaj Police Station. The complaint is annexed at annexure-A to the

petition. Section 147, 148, 149, 504, 507 and 506(1) have been invoked by the complainant, respondent No.2 herein. According to the complaint, the complainant is a journalist publishing a newspaper. That he is also a mahant of one Chehar Dham Shakti Pith, Modipur. According to him, on 17.05.2012, when he was proceeding in his Honda City Car from Mehsana to Modipur at 11 in the morning, he was intercepted by a Qualis which was coming from Ambasan. His car was stopped. 8 to 10 people got down from the Qualis with hockey sticks and base ball bats, broke the window glass of his car and assaulted him. They took away cash of Rs.5,000/ and a gold chain worth Rs.60,000/ The complaint further recites that the accosters were aged 25 to 45 years.

According to the complainant, he suspected the hand of the petitioner Ashok Thakore, who was a resident of Mehsana. The version of the complainant is that he owed large sums of money to the complainant and therefore he suspected that it was the petitioner who was behind the attack.

This in the nutshell is the narrative of the complaint.

2. Shri N D Nanavati, learned Senior advocate has appeared with Ms Neeta Panchal, for the applicant. Having taken me through the First Information Report, it is his case that the title of the First Information itself suggest that the complaint has been lodged on a mere suspicion. The title shows the name of the petitioner and bears the turn "suspect". Even in the

body of the complaint, the only allegation is that he suspects the petitioner behind the attack.

Sections invoked in the First Information Report are sections 397, 395 and 341 of the Indian Penal Code. The other sections invoked are 147, 148, 149. Mr Nanavati, points out that no role is attributed to the applicant/petitioner except based on suspicion. Had it been a case, otherwise, sections 114/34 and/ or section 120?B would have been invoked against the applicant. In absence of such invocation, the complaint on its bare reading discloses no offence, and therefore, deserves to be quashed.

3. Mr Chintan Dave, learned APP has produced on record a summary of the investigation carried out by the police authorities to contend that the needle of suspicion strongly points against the petitioner. According to Mr Dave, there is sufficient material to implicate the petitioner and therefore merely because the provisions of section 114 / 34 or 120-B have not been invoked would not give the benefit to the petitioner.

4. Mr I M Pandya, learned advocate, submitted that there is substantial material to implicate the applicant, petitioner. He has relied on the affidavit in reply filed by him to contend that once the anticipatory bail application that he has filed was rejected and the fact that he could get relief only before the Supreme Court, shows that though he was a mere suspect, at the stage of an application under Section 482 of the Code of Criminal Procedure, no

benefit be given to the petitioner.

5. Having heard learned advocates for the parties, it is evident that the reading of the complaint only shows that the complainant suspects the original petitioner. The language of the First Information Report shows that the applicant was shown as "suspect". Mr Chintan Dave, learned APPs contention supported by the arguments of Shri I M Pandya, at best would suggest that the petitioner's role could be one of being the man instrumental in the attack. Even if it be so, from the perusal of the charge sheet papers, if one were to conclude such association of the applicant, the First Information Report does not invoke the provisions of Section 114 of Section 34 or Section 120 B of the IPC, so as to enable the complicity of the petitioner-applicant. There is therefore force in the submission of learned advocate Shri Nanavati that, the First Information Report as it is does not make out a case for continuance of investigation on the present material and the FIR as it stands against the applicant.

6. Accordingly, the Special Criminal Application is allowed. FIR being I.CR No. 74 of 2012 lodged before the Langhnaj Police Station is quashed and set aside. Rule is made absolute to the above extent.