

(2014) 07 GUJ CK 0028
In the Gujarat High Court

Case No : Special Criminal Application (Direction) No. 1208 of 2014

Vajubhai Ishwarbhai Patel

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 30-07-2014

Acts Referred:

Constitution of India, 1950 — Article 21, 226
Criminal Procedure Code, 1973 (CrPC) — Section 154

Citation : (2014) 07 GUJ CK 0028

Hon'ble Judges : R.M. Chhaya, J

Bench : Single Bench

Advocate : Vijay H. Nangesh, Advocate for the Appellant; Hansa Punani, APP, Advocate for the Respondent

Judgement

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R.M. Chhaya, J.—Heard learned counsel for the petitioner.

2. Rule. Learned Additional Public Prosecutor waives service of Rule on behalf of respondents-State.

3. Considering the issue involved in the present petition and with consent of learned counsel appearing for the respective parties, this petition is taken up for final disposal forthwith.

4. By way of this petition under Articles 21 and 226 of the Constitution of India, the petitioner has prayed for appropriate writ, order or direction directing the respondent authorities to register the FIR against the accused persons pursuant to the application filed by the petitioner.

5. Learned counsel for the petitioner has submitted that though the application is filed by the petitioner before the police authorities, no actions are being taken. Learned counsel for the petitioner, however, relied upon the recent judgment passed by the Apex Court in Criminal Appeal No. 55 of 2014, wherein the Apex

Court has referred the Constitutional Bench judgment in the case of *Gopakumar B. Nair Vs. C.B.I. and Another*, wherein it has been observed thus:

(i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

(ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

(iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

(iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

(v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

(vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay. The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

(vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

(viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the

decision to conduct a preliminary inquiry must also be reflected, as mentioned above.

6. Learned Additional Public Prosecutor, on instructions, states that the application filed by the petitioner was taken for its consideration by the concerned police officer and a report came to be made to Superintendent of Police, Vadodara (Rural). It was further submitted that the Superintendent of Police, Vadodara (Rural) after verification of the same, has sent further instructions and has called for certain details by communication dated 15.07.2014.

7. In light of the aforesaid, it clearly borne out that the respondent-authorities are in the process of considering the application filed by the petitioner. At this stage, no further orders are required to be passed by this Court. However, the respondent authorities considering the aforesaid judgment of the Apex Court, shall take appropriate decision upon the application filed by the petitioner as expeditiously as possible on its own merits and in accordance with law as the same is pending for its consideration since last more than 6 months by now. Ms. Hansa Punani, learned Additional Public Prosecutor shall appraise the concerned officer to expedite the proceedings of the application filed by the petitioner.

8. With these observations, present petition stands disposed of. Rule is made absolute only to the aforesaid extent. Direct service is permitted.