SUPREME COURT OF INDIA

Ketankumar Babulal Patel

Vs.

Kesarben Jesangji

Crl.A.No.1509 of 2008

(Dr. Arijit Pasayat and Dr. Mukundakam Sharma JJ.)

23.09.2008

JUDGMENT

Dr.Arijit Pasayat, J.

1. Leave granted.

2. In these appeals challenge is to the judgment of a learned Single Judge of the Gujarat High Court disposing of several petitions. By the impugned judgment in each case the

High Court inter alia directed as follows:

"In the result, the petition is allowed. Order dated 11.4.2008 passed by the Judicial Magistrate, First Class, Ahmedabad (Rural) in Criminal Complaint No.103 of 2008 is quashed and set aside. Inquiry under Section 156(3) of the Code is ordered. Complaint be registered as an FIR by the officer in charge of the concerned Police Station for the offences disclosed in the complaint. Rule is made absolute."

3. Background facts in a nutshell are as follows:

"A complaint alleging commission of offences punishable under Sections 406, 420, 465, 467, 468 and 120B of the *Indian Penal Code, 1860* (in short the `IPC') was filed before the learned Judicial Magistrate, First Class, Ahmedabad (Rural) which was numbered as Criminal Case No.103 of 2008. The basis of the complaint was that on 29.3.2008 the petitioners in Special Criminal Application No.1060 of 2008 approached the District Superintendent of Police, Ahmedabad requesting him to exercise powers under Section 154 (3) of the *Code of Criminal Procedure, 1973* (in short the `Code'). But they were advised to approach the police station and assurance was given that they shall get justice. Thereafter, complaint was filed on 29.3.2008 before the Sarkhej Police Station but the same was not accepted. It was alleged that the respondents in the complaint were politically very influential persons and were prominent builders and hence police did not accept the complaint. It was also stated

that the District Superintendent of Police instead of helping them to give justice informed the respondent no.1 in the complaint about the said complaint on telephone and did not initiate action against the said respondent as he was a sitting member of the Legislative Assembly and belonged to the ruling party. It was highlighted that if the records of the telephones and mobiles of District Superintendent of Police and the Police Inspector are called for, it will become crystal clear that such communications were there. The scripts of the talks between the concerned officials and respondent No.1 have to be called for from the mobile companies. An order was passed earlier in Special Criminal Application No.918 of 2007. The Judicial Magistrate, Ist Class passed an order contrary to it by directing as follows:

"This complaint is sent to Sarkhej Police for inquiry and report under Section 202 of Cr. P.C. Declared in open Court."

After having held that there exists prima facie offence and connectivity of the accused with it, which is also referred to by the Collector in his order, requisite order was to be passed. Several other factual details were also referred to."

4. Learned counsel for the appellants in each case submitted that the course adopted by the High Court is impermissible. It is submitted that once the cognizance has been taken, the procedure in terms of Section 156(3) of the Code cannot be resorted to. It has to be in terms of Sections 202 and 204 of the Code. It is also submitted that once the Magistrate held that a prima facie offence was made out whether it was right or wrong, the only course available was issuance of process which has been directed. But the High Court overlooking that aspect has again directed that modality under Section 156(3) to be adopted. It is pointed out that reasons have been given as to why it was felt necessary to have resort to Section 156(3).

5. Learned counsel for the respondents on the other hand with reference to Section 202 of the Code submitted that action was in order. After hearing learned counsel for the parties and analyzing the legal position with reference to various decisions the impugned order was passed.

6. Learned counsel for the respondents further submitted that the High Court had the jurisdiction available and has directed inquiry to be conducted. The trial Court could have directed the action under Section 156(3) to be taken. The High Court has acted in accordance with law in directing that Section 156 (3) procedure was to be followed.

7. With reference to the order passed by the Collector vis-a- vis the power of attorney which forms the subject matter of controversy, it is submitted that records cannot be produced by the private respondents to substantiate the accusations. If the investigation is undertaken by the police, it can certainly take custody of the records and produce to the court as and when necessary.

8. It is submitted that the Magistrate had three courses open. Once the complaint is filed, it can even after finding that prima facie case exists direct investigation. Secondly, if no

offence was made out, to close the proceeding and thirdly to take cognizance. In the instant case, the trial Court adopted the first course available.

9. In *Minu Kumari and Anr. v. State of Bihar and Ors.*[1] the position was highlighted as follows:

> "16. When the information is laid with the Police, but no action in that behalf is taken, the complainant is given power under Section 190 read with Section 200 of the Code to lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss thecomplaint under Section 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and would issue process to the accused. These aspects have been highlighted by this Court in *All India Institute of Medical Sciences Employees' Union (Reg.) through its President v. Union of India and others*[2] . It was specifically observed that a writ petition in such cases is not to be entertained.
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> 17. The above position was highlighted in *Gangadhar Janardan Mhatre v. State of Maharashtra and Ors.*[3] ."

10. It is not clear from the order of the trial Court as to which of the alternatives, i.e. the first category or the third category was being resorted to. That would have enabled the High Court to decide as to whether the report could be made under Section 156(3) of the Code. Since the order of the trial Court is not very clear and the High Court has not dealt with this aspect, we deem it proper to remit the matter to the trial Court to decide the matter afresh expeditiously in the light of what has been stated in para 16 of Minu Kumari's case (supra). It is made clear that we have not expressed any opinion in that regard.

11. The appeals are disposed of.

[1]*(2006 (4) SCC 359)*
[2]*(1996 (11) SCC 582)*
[3]*(2004 (7) SCC 768)*