

**SUPREME COURT OF INDIA**

M.R. Gopinatha Pillai

Vs.

State of Gujarat

Writ Petition (Crl.) No.63 of 2007

(Tarun Chatterjee and V.S.Sirpurkar JJ.)

24.03.2009

**ORDER**

1. It has been found from the counter affidavit filed on behalf of the respondent-State of Gujarat that a petition being Special Criminal Application No.822/2004 has already been filed by Shamima Kausar, mother of Ishrat Jahan, one of the persons killed in encounter, and the same is pending in the High Court. Since this petition filed under Article 32 of the Constitution arises out of same incident, we are of the view that instead of entertaining this Writ Petition under Article 32 of the Constitution, it will be open to the petitioner to approach the Gujarat High Court which will decide the application on merits and in accordance with law within six months from the date of supply of a copy of this Order. The Writ Petition is disposed of accordingly.

2. We make it clear that we have not gone into the merits of this petition and the same shall be considered by the High Court while deciding the aforesaid application.