

**PRADUMANDSINH MOHBATSINH GOHIL V. STATE OF GUJARAT**

R/SCR.A/9461/2021 ORDER DATED: 07/06/2023

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 9461 of 2021

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PRADUMANDSINH MOHBATSINH GOHIL

Versus

STATE OF GUJARAT

===== Appearance:

H P BAXI(9459) for the Applicant(s) No. 1,2,3 SHIVANI R MODI(9280) for the Applicant(s) No. 1,2,3 NOTICE SERVED for the Respondent(s) No. 2 MR DHWAN JAISWAL, APP PUBLIC PROSECUTOR for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE SANDEEP N. BHATT

Date : 07/06/2023

ORAL ORDER

1. Rule returnable forthwith. Mr. Dhawan Jayswal, learned APP waives service of notice of rule for and on behalf of respondent - State.

2. The present application is filed by the applicants - original accused under Section 482 of the Code of Criminal Procedure, 1973 ('Code' for short) with the following prayers:

15(A) be pleased to admit and allow this petition;

(B) be pleased to quash and set aside the first

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information report registered against the applicants as being C.R. No.11208035211729 of 2021 dated 26.05.2021 for the offence punishable under Section-135(1) of the Gujarat Police Act in Gandhigram Police Station, Rajkot;

(C) be pleased, pending hearing and final disposal of this petition, to stay the investigation of C.R. No.11208035211729 of 2021 dated 26.05.2021 for the offence punishable under Section-135(1) of the Gujarat Police Act in Gandhigram Police Station, Rajkot;

(D) be pleased to grant any further reliefs deemed fit in the interest of justice.

3. While issuing notice on 05.10.2021, a co-ordinate bench of this Court has passed the following order:-

"Heard Mr. H.P.Baxi assisted by Ms.Shivani R. Modi, learned counsel for the Petitioners. The offence as alleged in the FIR is non-cognizable offence. The issue of law raised by learned counsel for the Petitioners is to the effect that without prior permission of the Court, no FIR can be lodged as per Section 155(ii) of the Code of Criminal Procedure.

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In view of the matter, Notice, returnable on 08.02.2022. Learned APP waives Notice for the respondent State. Meanwhile, there shall be no chargesheet qua the present Petitioners without prior permission of this Court, however, investigation may continue."

4. The facts of the case of the present applicants are as under:-

4.1 That the applicants are the businessmen and carrying on their business at Rajkot. On 26.05.2021, the applicants have parked vehicle No.I-20, G-03-LB-8005 and were went for purchasing bread from Kauser Bakery, Raiya Road, Rajkot at 00-45 hours. The water pipeline of friend of applicants viz.Shailendrasinh Mohbatsinh Gohil was damaged. The water was leaked from the pipeline. Hence, the applicants have purchased the plastic G.E.B. pipe and Iron pipe each of 2 and half feet to be replaced in place of damaged water pipe line. The police constable Shaileshbhai Makanbhai Lathara has checked the car and has asked pass and permit to kept iron pipe each of 2 and half feet in possession. At that time, the applicants have explained that no pass and permit required for keeping in possession of such iron pipe required to be

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replaced in damaged water pipe line, but the explanation of applicants was not accepted. Therefore, the police constable has filed the FIR being C.R. No.11208035211729 of 2021 dated 26.05.2021 for the offence punishable under Section- 135(1) of the Gujarat Police Act in Gandhigram Police Station, Rajkot against the present applicants.

5. Heard learned advocate Ms. Shivani Modi for the applicants and learned APP Mr Dhawan Jayswal for the respondent no.1. Though served, none appears for respondent no.2.

6. Ms. Shivani Modi learned advocate appearing for the applicants submitted that the offence under Section-135(1) of the G.P. Act is a non-cognizable offence and in view of Section-155(2) of Cr.P.C., without prior permission or order of the Magistrate, the police cannot registered the FIR and start the investigation. She further submitted that the penalty prescribed for the offence under Section-135(1) of the G.P.Act may extend to one year and as per Schedule-II of Cr.P.C., if the offence is punishable with imprisonment for less than 03

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years or with fine only, the offence is non-cognizable. She has relied upon the judgment of Hon'ble Supreme Court in the case of State of Haryana Vs. Bhajanlal reported in AIR

1992 SC 604 and submits that the present case falls within the parameters and guidelines issued in the said judgment. She further relied upon on the judgment of Hon'ble Supreme Court in the case of Keshavlal Thakur Vs. State of Bihar reported in Laws (SC) 1996 (10) 51 and submitted that the Hon'ble Supreme Court has quashed the FIR, which is filed for non-cognizable offence. She also relied on the judgment of Madras High court in the case of Balakrishnan Vs. The Police Inspector and the judgment of Karnataka High Court in the case of [Vaggeppa Gurulinga Jangaligi Vs. State of Karnataka](#) in support of her submission and prayed that this is a fit case for this court to exercise the power under Section-482 of the Cr.P.C. She has also submitted that even from bare perusal of FIR, the only two iron pipes are recovered from the vehicle, which is to be used for the purpose of some plumbing work. Therefore, she has prayed that on merit, no case is made out.

7. Per contra, learned APP Mr. Dhawan Jayswal submitted

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that on bare perusal of the FIR, it transpires that the applicants have breached the Notification of prohibition to keep weapons in possession as the notification is in existence from 24.04.2021 to 01.05.2021 and accordingly, the police officer who was on duty has checked the vehicle of the present applicants and found that there are two iron pipes and one gupti. Therefore, he has submitted that no discretion should be exercised in favour of the present applicants and trial is required to be proceeded.

8. I have considered the rival submission and I have also considered the judgments cited at the bar. Further, it will also be fruitful to mention the judgment of Hon'ble Supreme Court in the case of [State of Haryana V/s Bhajan Lal](#) reported in AIR 1992 SC 604, wherein the Hon'ble Supreme Court has laid down the following parameters/criteria to exercise the power under Section-482 of the Cr.P.C. The relevant paragraph is as under:-

"In the backdrop of the interpretation of the various relevant provisions of the Code under Ch.XIV and of the principles of law enunciated by this court in a series of decisions relating to the exercise of the extraordinary power under Art.226 or

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the inherent powers under sec.482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under sec.156(1) of the Code except under an order of a Magistrate within the purview of sec.155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under

sec.156(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

9. It is also relevant to consider the judgment of Hon'ble Apex Court in the case of Keshavlal Thakur Vs. State of Bihar reported in Laws (SC) 1996 (10) 51 in which the Hon'ble Supreme Court has quashed the FIR filed for non-cognizable offence.

10. Considering the above mentioned settled legal position,

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now the provision of Section-135 of the Gujarat Police Act is reproduced as under:-

135. Penalty for contravention of rule or directions under sections 37, 39 or 40 -  
Whoever disobeys an order lawfully made under section 37, 39 or 40 or abets the disobedience thereof shall, on conviction, be punished -

(i) if the order disobeyed or of which the disobedience was abetted was made under sub-section (1) of section 37 or under section 39 or section 40, with imprisonment for a term which may extend to one year, but shall not except for reasons to be recorded in writing be less than four months and shall also be liable to fine, and;

(ii) if the said order was made under sub-Section (2) of Section 37, with imprisonment for a term, which may extend to one month or with fine, which may extend to one hundred rupees, and

(iii) If the said order was made under sub-section (3) of section 37, with fine which may extend to one hundred rupees.

11. From the bare of reading of above section, the punishment for the offence under section 135 of G.P. Act is

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maximum one years. Considering the Schedule-II of Cr.P.C., the punishment for the offence where the imprisonment for a term of one year or more, but the Court imposes a sentence of imprisonment for a terms of less than three months. Considering the fact that there were two iron-pipe were recovered from vehicle and the applicants have tried to explain about the gupti, I found that there is prima-facie case is made out.

12. Section155(2) of the Cr.P.C. is reads thus:-

Section-155- Information as to non-cognizable cases and investigation of such cases -

(2) No police officer shall investigate a non- cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

13. Considering the fact that present FIR is filed for the non- cognizable offence and considering the Section-155(2) of Cr.P.C. and the judgment of the Hon'ble Apex Court, this Court is of the opinion that the FIR is required to be quashed.

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14. Resultantly, this application is allowed. The impugned FIR being C.R. No.11208035211729 of 2021 registered with Gandhigram Police Station, Rajkot is hereby quashed and set aside qua the present applicants. All other consequential proceedings, if any, arising out of said FIR are also quashed and set aside.

15. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(SANDEEP N. BHATT,J)

A. B. VAGHELA

