

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL REVISION APPLICATION (AGAINST ORDER PASSED BY
SUBORDINATE COURT) NO. 515 of 2024**

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VIJAYSINGH MEGHSINGH CHAUDHARY
Versus
STATE OF GUJARAT & ANR.

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Appearance:

MR JAL UNWALA, SR. ADVOCATE WITH MR AV NAIR(5602) for the
Applicant(s) No. 1
for the Respondent(s) No. 2
MR HK PATEL, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI

Date : 05/04/2024

ORAL ORDER

1. Learned advocate Mr.Janak Vardey submits that he has instructions to appear for respondent no.2 and he will file Vakalatnama. Registry to accept the same.

2. In Criminal Misc. Application No.533 of 2023, in inquiry conducted under section 202 of Cr.P.C., learned 6th Additional Sessions Judge, Deesa, Banaskantha has passed following final order dated 26.03.2024 : -

“The Criminal Court Inquiry under Section 202 of Criminal Procedure Code, shall stand disposed off with following directions :

(a). It is ordered that the State of Gujarat shall appoint & authorize any of it's officer, to lodge & register a F.I.R., with Deesa City North Police Station, qua Mr. V. M. Chaudhary, Police Inspector, Deesa City North Police Station, Deesa, District : Banaskantha, for committing offence of forgery punishable U/s. 465, 466, 471 of Indian

Penal Code, by making false arrest memo & arrest register, showing arrest at 20:10 hours on dtd.10/07/2023, though the applicant - Raimalsing Bansing Parmar was arrested from the court premises at 12:48 hours on dtd. 10/07/2023, without permission of Court and the said forged Arrest Memo was being used before the Learned concerned Magistrate as genuine, while producing the applicant/accused - Raimalsing Bansing Parmar before the Hon'ble Magistrate's Court, at Deesa.

(b). Mr. V. M. Chaudhary, Police Inspector / Investigating Officer, Deesa City North Police Station, is held guilty for not obtaining any written permission from the Court, to arrange and keep police watch in Deesa Court premises & building and for ordering and directing his subordinate police staffs to arrest the Applicant / alleged accused – Raimalsing Bansing Parmar, from the Court Premises without permission of the Court.

(c). Mr. V. M. Chaudhary, Police Inspector, Deesa City North Police Station, is held guilty of keeping the applicant – Raimalsing Bansing Parmar in illegal custody / detention for about 7 hours on dated 10/07/2023.

(d). Mr. V. M. Chaudhary, Police Inspector, Deesa City North Police Station, is held guilty for committing breach / dis-obedience of the directions & guidelines with regards to arrest issued time and again by the Hon'ble Supreme Court and various Hon'ble High Courts.

(e). The State of Gujarat is ordered & directed to immediately initiate departmental inquiry / proceedings qua Mr. V. M. Chaudhary, Police Inspector, Deesa City North Police Station, Deesa, District : Banaskantha, for dismissing him from his service and to suspend him with immediate effect, pending departmental proceedings, for mis-using power vested in him due to his post.

(f). The State of Gujarat is ordered & directed to immediately transfer Mr. V. M. Chaudhary, Police Inspector, Deesa City North Police Station, from Banaskantha District, to have fair, just & truthful investigation of alleged offence of forgery committed by Mr.

V. M. Chaudhary, as he would have direct control and dominating power over all his subordinate police staffs of the Deesa City North Police Station and neighboring police stations.

(g). It is worthless to note that apart from above action to be taken qua Mr. V. M. Chaudhary, Police Inspector, Deesa City North Police Station, the Applicant is always at liberty to file appropriate litigation, claiming appropriate compensation for keeping him in illegal custody, qua Mr. V. M. Chaudhary, Police Inspector, Deesa City North Police Station, Deesa, District : Banaskantha.”

3. This Revision Application under section 397 read with section 401 of Cr.P.C. challenges above final order.

4. Heard learned Senior Advocate Mr.Jal Unwala assisted by learned advocate Mr.A.V.Nair and learned APP for the respondent State and learned advocate Mr.Janak Vardey for respondent no.2.

5. What could be notice that respondent no.2 herein who is accused in Criminal Case No.2043 of 2022 had attended proceedings on 10.07.2023 conducted before the learned JMFC, Dessa. Respondent no.2 herein after attending Court proceedings left Court house. The police arrested him, once he came out of the Court building for the offence being C.R.No.11195016230266 of 2023. He was arrested as accused in the said offence in addition to offence under section 399, 114 of IPC along with section 25(1B)(a) of Arms Act. The issue of arrest of respondent no.2 herein from the gate of court premises has triggered learned Additional Sessions Judge and thus started inquiry under section 202 of Cr.P.C.

6. Para 6 of the impugned order is material, which reads as under :-

“(6). Under such circumstances, this Court was left with no option, but to initiate Court Inquiry under Section 202 of Code of Criminal Procedure, for the purpose of deciding whether there are sufficient grounds or not, for proceeding qua Mr. V. M. Chaudhary, Police Inspector, Deesa City North Police Station. This Court was therefore compelled to initiate Criminal Court Inquiry under Section 202 of Cr.P.C. in said Cr.M.A. No. 533/2023 and was pleased to issue Show Cause Notice dated 20/07/2023 at Exh.-16 to Mr. V. M. Chaudhary, Police Inspector, Deesa City North Police Station, which was served on dated 20/07/2023 personally on Mr. V. M. Chaudhary, Police Inspector, Deesa City North Police Station.”

7. Thus on his own motion, learned Additional Sessions Judge started inquiry under section 202 of Cr.P.C. against serving PI, Deesa Police Station. He has conducted inquiry on his own and passed long order stated herein above.

8. Having heard learned advocates for the parties, first question arise whether learned Additional Sessions Judge is empowered to conduct inquiry under Chapter 15 of Cr.P.C. without having any power to take cognizance directly until proceedings are committed. Moot question is not addressed by the learned Additional Sessions Judge. He has on his own taken up the complaint, initiated inquiry under section 202 of Cr.P.C. and passed order stated herein above, totally ignoring provisions of section 190, 192, 194 of Cr.P.C.

9. The scheme of Cr.P.C. is unequivocally clear that if cause for conducting inquiry of alleged offence is made or alleged, it is

jurisdictional Court viz. Chief Judicial Magistrate or any other Additional Chief Judicial Magistrate who are empowered, shall conduct inquiry. Learned Sessions Judge cannot act directly until proceedings are committed to the learned Sessions Judge except in case where provisions of law provides for learned Sessions Judge or Special Judge to take cognizance without being matter committed to him.

10. Apart from above, this Court fails to understand in which capacity and under which power learned Additional Sessions Judge has authority to direct State to file FIR against serving Police Inspector. Section 197 of Cr.P.C. provides that no Government Officer would be prosecuted without prior permission of the State. What further appears that learned Additional Sessions Judge also ordered to initiate departmental proceedings for dismissing him from service or to suspend him with immediate effect. Transfer of petitioner is also directed by learned Additional Sessions Judge. This order appears to be passed due to personal grudge and malevolence. Power to transfer, suspend, initiate departmental inquiry or dismissal can be passed by appointing authority. In inquiry, further strange order is passed giving liberty to respondent no.2 herein to file appropriate litigation claiming compensation for keeping him in illegal custody. This Court really doubts whether learned Additional Sessions Judge was exercising judicial discretion or whether impugned order is passed under judicial discipline. It appears that personal vendetta has taken cause for conducting inquiry which was completely without jurisdiction. Crotchet impulse cannot be a part of judicial order.

11. There is judicial and jurisdictional propriety. Every Court including learned Additional Sessions Judge is bound to follow such judicial and jurisdictional propriety. Whims and Caprices of Judge have no place in judicial decision. Pages and pages are penned by learned Additional Sessions Judge to conduct inquiry for which he has not authority or not been empowered. Prima facie, it appears that learned Sessions Judge has exceeded its jurisdiction and passed order which are not called for. Impugned order being foible and its fallibility could be envisioned. Personal score appears to be settled.

12. A lot can be observed about impugned order and way the inquiry was conducted whereby one has judge his own cause. Since Revision Application is at the stage of admission, the Court restrains itself from passing any further order.

13. In view of above, present Revision Application deserves consideration. **Rule.** Learned APP waives service of rule on behalf of respondent – State and learned advocate Mr.Verday waives service of rule on behalf of respondent no.2. Interim relief in terms of para - 8(c) is granted till further orders.

Registry to call for record and proceedings of Inquiry under section 202 of Cr.P.C. in Criminal Misc. Application No.533 of 2023 from the learned Trial Court.

SATISH

(J. C. DOSHI,J)