

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION NO. 2249 of 2015**

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MANSUKHBHAI VALJIBHAI KUMARKHANIYA (DEVIPUJAK) & 3 other(s)
Versus
STATE OF GUJARAT & 5 other(s)

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Appearance:

MAYANK R CHAVDA(9250) for the Applicant(s) No. 1,2,3,4
MR. HARDIK J JANI(6497) for the Applicant(s) No. 1,2,3,4
NOTICE SERVED BY DS for the Respondent(s) No. 1,2,3,4,5,6
MS M D MEHTA, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE NIKHIL S. KARIEL

Date : 16/03/2022

ORAL ORDER

1. Heard learned Advocate Mr. Hardik J. Jani for the petitioners and learned APP Ms. M.D. Mehta for the respondent-State.
2. Having heard the submissions made by learned Advocates for the parties, this Court is of the prima facie opinion that this is a clear case of extreme excess by the concerned police authorities and whereas even senior officers of the level of Dy.S.P. and SP, who were supposed to hold an impartial inquiry, have just conducted a sham inquiry may be in order to protect their subordinates.
3. The petitioners appear to be victims on account of their birth in a particular community. Though independent witnesses appear to support the fact that the petitioner Nos. 1 and 2 being two brothers and the petitioner Nos. 3 and 4 being their wives are earning their living by way of an honest occupation, yet those aspects have not been at all considered by the concerned officers.
4. It appears that an FIR for offences punishable under Sections 328 and 394 of the IPC had been preferred before the Dhandhuka Police

Station, District Ahmedabad on 04.02.2015 and whereas allegations were against two unknown males and two unknown females. It appears that the said FIR was being investigated by the respondent No.6 herein and as can be made out from the inquiry report by the SP concerned dated 27.04.2015 very conveniently the petitioner Nos. 1 and 2 while passing on a motorbike had been intercepted by the police party and the petitioners had not stopped their motorbike and they had slipped and fell down a little further and they had been caught by the police officials. Thereafter the investigation proceeded where the only material available against the petitioners, being in the nature of their confession, the Investigating Officer accepting the same, had submitted the charge-sheet and fortunately for the petitioners the entire investigation fell through before the Court conducting the trial. The fall was such that even the complainant who is alleged to have identified the petitioners in the Identification Parade in the office of the Mamlatdar, in his deposition has stated that the petitioners were not identified by him as the persons who had committed the alleged offence.

5. Things would not have attained such seriousness, if this was a one off case by the police officials. It appears that upon the petitioners being arrested with regard to the FIR referred to hereinabove, again merely based upon the confessional statements of the petitioners, 04 undetected offences of the year 2013 and 2014 were stated to be solved with regard to concerned police station as well as with regard to nearby police station. It would be pertinent to mention that in all the cases, the learned trial Courts have acquitted the petitioners.

6. It also would require to be mentioned herein that as regards an FIR being C.R. No.I- 27 of 2013 registered with Barwala Police Station for offence punishable under Section 302 and 394 of the IPC, it appears that unlike the Investigating Officers of other FIRs referred to whereby based upon the confessional statements of the petitioners, the offence was detected and charge-sheets were filed, the Investigating Officer with regard

to the FIR registered with the Barwala Police Station appears to be a person who went by the rule of law. The officer after thorough investigation had submitted a report to the learned Magistrate, Barwala, under Section 169 of the Cr.P.C. The report inter alia mentions that the petitioners had confessed to have committed the alleged crimes on account of excessive torture by the police officials. The report shows that the officer had recorded the statements of two persons of the village, in which the petitioners are residing, wherein the said persons mention that the petitioners for the last 12 years having been cultivating land to the extent of approximately 350 Bighas and whereas they were cultivating cotton in the said agricultural land in partnership with the persons whose statements have been taken. It appears that the petitioners through honest hard work have earned reasonably and the amount as well as the ornaments recovered from the petitioners clearly appears to be the money which had been earned by the petitioners or which had been purchased from the said money and none of the articles were relatable to any proceeds of the crime. The Investigating Officer had also conducted an Identification Parade, more particularly with regard to another offence, though which had not been stated to be committed by the petitioners and because of the intervention and honest investigation done by the said officer, it appears that the complainants of the said FIRs have not identified the petitioners as the persons who had committed the crime in question. Based upon the report by the said Investigating Officer of the Barwala Police Station, the learned JMFC, Barwala, has released the present petitioners. The investigation by the said police officer also contains certificates issued by the Medical Officer of the Community Health Center, Barwala, near about the period when the petitioners had been first apprehended and whereas the said certificates clearly reveal numerous injuries sustained by the petitioners, more particularly on account of torture by the police officials.

7. It appears that near about the same period when the Investigating

Officer, Barwala Police Station, had submitted his report under Section 169 of the Cr.P.C. before the learned Magistrate in the month of March, 2015, the Deputy Superintendent of Police, Viramgam and Superintendent of Police, Ahmedabad (Rural) had conducted an inquiry/investigation. Unfortunately, it appears that the investigation could not unearth any fault by the police officials. The report also reveals the probable reason for which the petitioners appear to have been apprehended in the first place and as referred to hereinabove, that would relate to the accident of the birth of the petitioners. It appears that the police officials were swayed by the fact that the petitioners belong to a particular community and whereas the said community, according to the investigation as being attempted to be obliquely mentioned therein, is engaged in theft and other illegal activities and whereas there also appear to be numerous cases against a near relative of the present petitioners. Thus, it appears that while the petitioners though they are earning their livelihood honestly, on account of the fact that they had been born in a particular community and certain persons in the community are engaged in doing illegal activity and one of the relatives of the petitioners also stated to be engaged in such illegal activity, therefore the petitioners also have been profiled as law breakers. The apathy of the police officials, more particularly the senior officers of the level of Dy.S.P and SP submitting such a halfhearted report before this Court is not appreciated.

8. Having regard to the observations hereinabove, let the respondent No.4 - Inspector General of Police, Ahmedabad Range, conduct an inquiry into the cause of arrest of the present petitioners and their being implicated in other undetected offences and submit a very clear report as to whether any excess had been committed by the police officials at any stage. Such report shall be submitted after a thorough investigation by a Police Officer not below the rank of Superintendent of Police and whereas the final report should be submitted to the Court by way of an affidavit by the Inspector General of Police.

9. After the affidavit is submitted by the concerned Officer, this Court would after hearing the State decide action to be taken against the police officials found involved, if any.

10. As this Court finds that prima facie the petitioners appear to have been falsely implicated in approximately 05 FIRs and whereas the petitioners have undergone pain, agony and suffering on account of a wrong investigation, the term wrong is used since this Court has ordered an inquiry but the the fact of the petitioners having been arrested, the fact of the petitioners having beaten up by police, the fact of the petitioners having been acquitted by the concerned Trial Courts cannot be ignored or overlooked. Hence, the State of Gujarat through an Officer not below the rank of Deputy Secretary of the Home Department to file an affidavit as to why compensation in the nature of exemplary compensation should not be directed to be paid to the petitioners by the State.

11. For the purpose of filing both the affidavits, list this matter on 12.04.2022.

BDSONGARA

(NIKHIL S. KARIEL,J)