



**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**R/SPECIAL CRIMINAL APPLICATION NO. 197 of 2020**

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KUTUBIDDIN ANSARI  
Versus  
STATE OF GUJARAT

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Appearance:

MR AJ YAGNIK(1372) for the Applicant(s) No. 1  
for the Respondent(s) No. 2,3

MR CHINTAN DAVE, APP for the Respondent(s) No. 1

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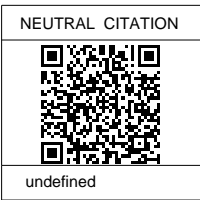
**CORAM: HONOURABLE MR. JUSTICE SANDEEP N. BHATT**

**Date : 14/09/2023**

**ORAL ORDER**

1. Present petition is filed with a prayer to quash and set aside order passed by learned City Civil and Sessions Court, Ahmedabad, in Criminal Revision Application No.149 of 2016 and earlier order dated 10.3.2014 passed by learned Additional Chief Metropolitan Magistrate, Ahmedabad, below Exh.1 in Inquiry Application No.4 of 2013 (arising out of Criminal Misc. Application No.55 of 2013) and direct learned Additional Chief Metropolitan Magistrate, Ahmedabad, to proceed in accordance with law in Criminal Misc. Application No.55 of 2013 against proposed accused.

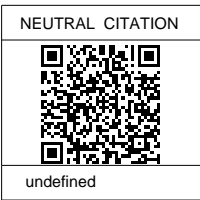
2. Brief facts of the case are that the present petitioner was a victim of the riots that took place in Gujarat in 2002 and that his picture was published in all the newspapers as face of the riots and that was so traumatizing to the



petitioner that the present petitioner had to leave the State of Gujarat and had to live in Kolkata for 3 years. It is submitted that the petitioner returned to Gujarat in the year 2005 and since then the petitioner is staying at the address mentioned in the cause title herein above.

2.2. It is stated that a film titled "Rajdhani Express" was released on 04.01.2013 and the petitioner was shocked to see that the picture of the petitioner taken by the journalist at the time of Gujarat Riots, 2002 was used without prior approval or consent of the petitioner in the said film. It is submitted that the petitioner has been portrayed in the said film in such a manner that it has caused great harm to his reputation and has endangered his personal safety and security. That, for the sake of brevity it can be stated that the said film has showcased the present petitioner in a scandalous background which harms and undermines the reputation of the petitioner. It is submitted that due to the use of such image in the said film, the petitioner had to relive the traumatizing events of Gujarat riots of 2002.

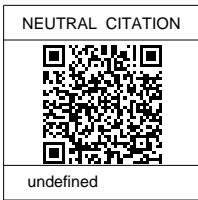
2.3. The petitioner, therefore had filed complaint under section 200 of the Code of Criminal Procedure, 1973 before learned Chief Additional Metropolitan Magistrate *vide* Criminal Misc. Application No. 55/ 2013 for the offence under



Section 499, 500, 153 read with section 120-B of the Indian Penal Code, 1860. It is submitted that after recording verification of the petitioner, the learned Magistrate ordered inquiry under section 202 of Code of Criminal Procedure vide order dated 18.03.2013 and further directed the present petitioner to remain present on 22.04.2013 with further evidence.

2.4. It is submitted that learned Chief Additional Metropolitan Magistrate on 10.03.2014 summarily dismissed the complaint of the petitioner under Section 203 of the Code of Criminal Procedure on the ground that the photographs and the video compact disk of the film "Rajdhani Express" which has been produced by the petitioner as evidence does not prove that the said photograph which has been shown in the said film is of the applicant and that it has harmed or caused damage to the reputation of the petitioner.

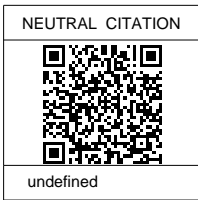
2.5. It is submitted that aggrieved by the order of the learned Chief Additional Metropolitan Magistrate, the petitioner herein had approached the Hon'ble High Court of Gujarat *vide* Criminal Misc. Application No. 8776 of 2014 challenging order dated 10.03.2014. However, the said Criminal Misc. Application was subsequently withdrawn by the petitioner herein and this Hon'ble High Court *vide* its



order dated 03.02.2015 allowed the said withdrawal with liberty to file appropriate application.

2.6. It is submitted that after withdrawing the said application, the petitioner filed Criminal Revision Application No.149/2016 before the City Civil and Sessions Court, Ahmedabad challenging final order dated 10.03.2014 passed by the learned Additional Chief Metropolitan Magistrate praying to set aside the order dated 10.03.2014 and to order for investigation under Section 156(3) of the Criminal Procedure Code, 1973.

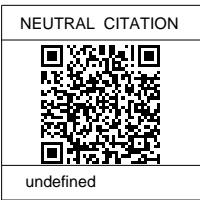
2.7 It is submitted that by order dated 15.03.2019, City Civil and Sessions Court rejected the Criminal Revision Application No.149/2016 on the ground that the petitioner (original complainant) has not provided any evidence or proof showing the harm caused to the reputation of the petitioner and the said harm has been intentionally caused by the respondent no.2 and 3 in the present petition. Further, the petitioner has also not been able to prove that the photograph which has been used in the said film is of the petitioner only and not of anybody else. Hence, upholding the order dated 10.03.2014 passed by the learned Additional Chief Metropolitan Magistrate in Criminal Inquiry Case No. 14/2013, the City Civil and Sessions Court rejected Criminal



Revision Application No. 149/2016 by the order dated 15.03.2019. Being aggrieved by it, present petition is preferred by the petitioner.

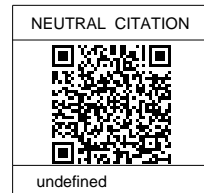
3. Heard Mr.Gohil for Mr.A.J.Yagnik, learned advocate for the petitioner and Mr.Chintan Dave, learned APP for the respondent-State.

4. Mr.Gohil, learned advocate for the petitioner submits that both the Courts below have not properly considered the fact that *prima facie* offence is made out under Section 499 of IPC. He has drawn attention of this Court towards the verification of the petitioner, which is recorded by the trial Court while registering the complaint of the petitioner, wherein he has given necessary details. He has further submitted that both the Courts below have not given proper reasons for passing impugned orders. He has further submitted that order is passed by learned trial Court under Section 203 of the Criminal Procedure Code, which is nothing but a grave error of law. He has further submitted that learned Magistrate ought to have ordered investigation under Section 196 (3) of Criminal Procedure Code, considering *prima facie* case of the petitioner. He, therefore, prays to allow both this petition by quashing and setting aside the impugned orders passed by the Courts below.



5. *Per contra*, Mr.Chintan Dave, learned APP for the respondent-State has submitted that both the Courts below have not committed any error, more particularly, the trial Court has given cogent and convincing reasons, which are properly appreciated by learned Revisional Court while exercising power under Section 397 by framing issues and giving detailed reasons for deciding such revision application. *Prima facie*, it cannot be said that the Courts below have committed any error and the Courts below have come to the right conclusion, that after the complaint sought to be filed by present petitioner is required to be dismissed under the provisions of Section 203 of Criminal Procedure Code. He, therefore, prays that as both the Courts below have given concurrent finding of fact and also no error of law is found from the impugned judgment, present petition may be dismissed.

6. I have considered rival submissions made at the bar. I have also considered the contents of the impugned application, whereby complaint under Section 499, 153 and 500 and 120-B of IPC is sought to be filed against the proposed accused. Provisions of Sections 120-B, 153, 499 and 500 of IPC are required to be considered, which are as under:-

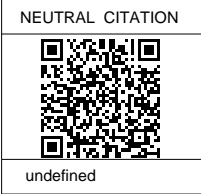


***“120-B. Punishment of criminal conspiracy.--(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, [imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.***

***(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.]”***

***“153. Wantonly giving provocation, with intent to cause riot:***

***Whoever maliciously, or wantonly by doing anything which is illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.”***



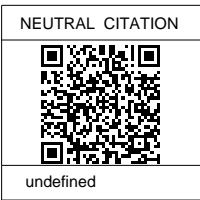
**“499. Defamation.-**Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

**500. Punishment for defamation.—**Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.”

7. Provisions of Sections 202 and 203 of Criminal Procedure Code are also relevant, which are as under:-

**“202. Postponement of issue of process.—**(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, 1 [and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction,] postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:





*Provided that no such direction for investigation shall be made,—*

*(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or*

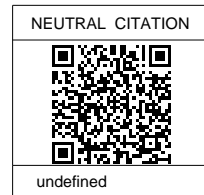
*(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.*

*(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:*

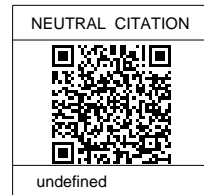
*Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.*

*(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.*

**203. Dismissal of complaint.**—*If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing.”*

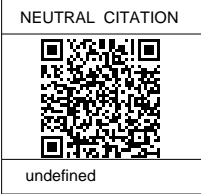


8. It transpires that the dispute pertains to some scenes of a movie named as “Rajdhani Express”. It also transpires that the complaint is filed against respondent nos.2 and 3, however, during the pendency of revision application, as respondent no.2, Ashok Gohil was not served, he was deleted by order passed by Revisional Court under Exh.27. Considering the reasons given by the Courts below, more particularly, trial Court in Inquiry Application No.4 of 2013, below Exh.1, after inquiry made under Section 202 of Criminal Procedure Code, *prima facie* found that there is no material or evidence produced by the complainant. Meaning thereby, it is established that there is no defamation and ingredients of Section 499 are not satisfied. It also transpires that ingredients of Section 153 pertains to inciting a person for rioting and Section 120-B pertains to conspiracy to commit an offence by two or more persons. There is no satisfactory evidence found by the learned trial Court from the material available on record, which constitutes offence alleged in the FIR. Therefore, the Court has formed an opinion that since ingredients of the complaint are not satisfied on bare reading of the complaint as well as material available on record, the complaint is required to be dismissed under the provisions of Sections 203 of the Criminal Procedure Code. Such order is challenged before the revisional



Court, wherein Revision Court has also framed issues for determination and after considering the material available on record, it has found that the trial Court has given cogent and convincing reasons and the order passed by the trial Court is found to be just and proper. Revisional Court has also come to the conclusion that no *prima faice* offence is made out from the material available on record against the accused persons.

9. It is rightly found by the Courts below that the complainant has not produced any evidence before the lower Court that the accused have used the photograph of the complainant with the intention of damaging the personal reputation of the complainant. Even the lower court has recorded in its order that no evidence has been produced that the complainant has suffered any loss due to such act of the accused. The lower court has also noted in its order that no clear evidence has been produced that the plaintiff has done any act causing damage and the plaintiff has not examined the witnesses who can be said to be neutral in that regard. The complainant in this case has not produced any clear evidence that the reputation of the complainant has been damaged and such damage has been intentionally caused by the accused persons. Thus, taking into account all these facts and evidence, the Courts below have properly



evaluated the evidence. Accordingly, both the Courts below have appreciated the material available on record and given concurrent findings of fact and appreciated the provisions of law in proper manner. Revisional Court has also exercised its jurisdiction in proper manner by confirming the order of the trial Court. Since the orders passed by the Courts below are in consonance with the provisions of law, I do not find any reason to interfere with the impugned orders.

10. Accordingly, present petition is dismissed. The impugned order dated 10.3.2014 passed by learned Additional Chief Metropolitan Magistrate, Ahmedabad, below Exh.1 in Inquiry Application No.4 of 2013 and order dated 15.3.2019 passed by learned Additional Sessions Judge, City Civil and Sessions Court, Ahmedabad, in Criminal Revision Application No.149 of 2016 are hereby confirmed.

R.S. MALEK

**(SANDEEP N. BHATT,J)**