

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION (RECALL) NO. 1 of 2020

In

R/SPECIAL CRIMINAL APPLICATION NO. 680 of 1999

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE J.B.PARDIWALA

Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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SANJIV RAJENDRA BHATT THRO SHWETA SANJIV BHATT

Versus

STATE OF RAJASTHAN

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Appearance:

MR SAURIN A SHAH for the PETITIONER.

MR MITESH AMIN, PUBLIC PROSECUTOR WITH MR CHINTAN DAVE,
APP for the RESPONDENT.

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CORAM: HONOURABLE MR.JUSTICE J.B.PARDIWALA

Date : 17/01/2020

IA JUDGMENT

1. By this application, the applicant – an accused of an N.D.P.S. case and a former Police Officer has prayed for the following reliefs :

“13(A) That the Hon'ble Court be pleased to reconsider the order dated 03-04-2018 passed in Special Criminal Application No.680 of 1999 with Special Criminal Application No.1079 of 1998 and if the Hon'ble Court is pleased to reconsider the said order, then the Hon'ble Court further be pleased to issue an appropriate writ, order or direction to recall the order dated 03-04-2018 passed in Special Criminal Application No.680/1999 with Special Criminal Application No.1079/1998 with a further direction indicating all proceeding initiated so far based on the said order stands ab-initio void.”

2. This application is nothing but one more attempt on the part of the applicant to create unnecessary hindrances and obstructions in the conduct of the trial proceedings of the Special N.D.P.S. Case No.3 of 2018 in the Court of the Special Judge [NDPS], 4th Additional Sessions Judge, Banaskantha at Palanpur and thereby, thwart the due process of law.

3. The applicant wants this Court to recall, or rather, review the judgment and order passed by this Court dated 3rd April, 2018 in the Special Criminal Application No.1079 of 1998 and the connected Special Criminal Application No.680 of 1999. The recall or review is prayed for substantially on the ground that few important facts were suppressed or deliberately not brought to the notice of this Court by the State - respondent. Had such facts been brought to the notice of this Court, then probably, the Court would not have issued the directions to constitute a Special Investigation Team [SIT] for the purpose of investigation

of the FIR being C.R. No.I-216 of 1996 registered with the Palanpur City Police Station.

4. Having regard to the serious nature of the crime alleged to have been committed and the gross facts on record, this Court, while disposing of the above referred two writ-applications, passed the following order:-

“53. In the result, both the writ-applications are disposed of with a direction that the investigation of the C.R. No.216/96 registered with the Palanpur City Police Station be conducted by a Special Investigation Team constituted from out of the CID (Crime), State of Gujarat, which is a central agency of crime detection in the State of Gujarat.

54. The Special Investigation Team shall consists of the officers of not below the rank of the Superintendent of Police and shall have an officer of the level of the Deputy Inspector General of Police as its head.

55. The investigation shall be carried out under the direct supervision of an officer not below the rank of the Inspector General of Police.

56. As this litigation is of the year 1996, the investigation shall be completed within a period of three months from the date of service of this order and in the right direction.

57. There shall not be any delay or any callous attitude in the conduct or completion of the investigation.”

5. It appears that pursuant to the directions issued by this Court, referred to above, the Special Investigation Team was constituted and the investigation was carried out in accordance with law. The applicant herein was arrested in connection with the alleged crime. The investigation was completed and charge-sheet came to be filed on 2nd November 2018 in the Court of the Special Judge [N.D.P.S.], Banaskantha at Palanpur, for the offences punishable under Sections 120B, 116, 119, 167, 204, 343 of the Indian Penal Code and Sections 17, 18, 29, 58(2), 59(2)(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

6. It appears that the applicant also preferred bail application in the Court of the Special Judge [N.D.P.S.], which came to be rejected vide order dated 7th December 2018.

7. The applicant, thereafter, preferred a bail application before this Court by filing the Criminal Misc. Application No.23368 of 2018. The said application came to be rejected by this Court vide order dated 7th March 2019. While rejecting the bail application, this Court observed as under:-

“38 All the aspects discussed above when carefully examined cumulatively, this Court is of the opinion that it would not be neither in the interest of justice nor would the criteria laid down legally under the provisions of NDPS Act, permit grant of regular bail to the petitioner and hence, the request of grant of regular bail deserves no consideration.

38.1 Mere emphasis on the part of the petitioner of delay of 21 years in the proceedings with the matter cannot be the sole guiding factor, more particularly when it was the stay obtained by the co-accused before the specific directions were issued by the Coordinate Bench of this Court (Coram:Justice J.B.Pardiwala, J.). The investigation in a right sense could not be initiated in Prohibition CR.No.216 of 1999 till recently and every possible attempt was made to stall the proceedings and hence, conduct of the alleged perpetrators of crime if has contributed in causing inordinate delay in proceeding with investigation, it surely cannot yield any benefits to those, who are contributors or who have chosen to support such moves impliedly or from behind the curtains Petitioner acting as a Superintendent of Police, who is otherwise obliged to safeguard the interest of all the residents of the District and protect the law and order, if is alleged to have indulged in the grave and serious offence of alleged procurement of narcotic substance involving himself along with other members of the police force to conspire against an innocent person, to help the sitting Judge of the High Court in getting the immovable property by overreaching the process of law.

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38.2 This entire design also does not inspire confidence that if enlarged during the pendency of trial with his position and past conduct, there may be a serious possibility of tempering with the witnesses and thereby thwart the course of justice. The expertise mastered under the law for having enjoyed different positions as a Senior Police Officer in IPS cadre could result into tyranny for the witnesses who

are all his juniors and subvergence of the criminal justice system. Request, for the regular bail therefore, cannot be acceded to. Application for regular bail under section 439 of the Criminal Procedure Code deserves to be rejected.

38.3 However, while balancing the scale, keeping in mind the offence being of the year 1996, where the trial has not as yet begun, the trial Court is directed to expedite the process of completing the trial sooner as possible bearing in mind the provisions of section 309 of the Criminal Procedure Code where the applicant shall cooperate. If the trial does not get concluded within the period of six months, the applicant shall be at the liberty to approach this Court once again.

39 With the above reasonings, the application for regular bail under section 439 of the Criminal Procedure Code is rejected and the same is disposed of. Rule is discharged.”

8. It also appears that the matter was carried by the applicant to the Supreme Court. The applicant has annexed the order passed by the Supreme Court dated 4th October 2018. I find reference of three diary numbers in the order passed by the Supreme Court. The order reads thus:-

“Diary No. 35136/2018

Permission to file special leave petition is granted.

By order dated 24.09.2018 we had required the State of Gujarat to respond to the allegation made by the petitioner

that her husband, Sanjeev Bhatt, who was in police custody had not been allowed to execute vakalatnama and other documents to move this Court.

In response, the State of Gujarat had filed its affidavit which had been replied too by the petitioner.

Having considered the matter and the statements made in the respective affidavits, we are of the view that it will not be appropriate or necessary for this Court to go into the said question at this stage in view of the highly contentious stand taken by the respective parties.

Rather it would be appropriate to leave the petitioner with the option of availing all remedies as may be open in law to ventilate her grievance in this regard, if so advised.

Insofar as the merits of the matter is concerned, as admittedly the husband of the petitioner is now in judicial custody, the order of the High Court impugned in this special leave petition has spent its force.

The special leave petition and all pending applications are, therefore, closed as having become infructuous.

We also make it clear that the present order will not come in the way of the petitioner moving the appropriate Court for grant of regular bail and consideration of the same in accordance with law.

Diary No(s). 35237/2018

Permission to file special leave petition is granted.

Having heard the learned counsel for the petitioner, we are not inclined to interfere with the order dated 03.04.2018 passed by the High Court of Gujarat and/or to interfere with the on-going investigation in connection with F.I.R. bearing C.R. No.216 of 1996, Palanpur City Police Station, Gujarat.

Petitioner is left with the remedies as recorded in our order to be passed in Writ Petition (CRL) No.265 of 2018.

Special Leave Petition and all pending applications are dismissed in the above terms.

We also make it clear that the present order will not come in the way of the petitioner moving the appropriate Court for grant of regular bail and consideration of the same in accordance with law.

Writ Petition (Crl.) No.265/2018

As the husband of the petitioner is now in judicial custody, it will be open for him, if so advised, to move the High Court seeking relief(s) as sought in the present petition filed under Article 32 of the Constitution. The writ petition filed under Article 32 of the Constitution and all pending applications are accordingly dismissed.”

9. I take notice of the fact that the judgment and order passed by this Court, the review or recall of which is prayed for by way of the present application, was also made a subject-matter of challenge before the Supreme Court. The Dairy No.35237 of 2018 noted in the order passed by the Supreme Court is with respect to the judgment and order passed by this Court.

10. Thus, it appears that the Supreme Court declined to interfere with the judgment and order passed by this Court dated 3rd April 2018.

11. It also appears that thereafter the applicant preferred a discharge application before the trial Court. The discharge application came to be rejected by the trial Court vide order dated 23rd August 2019.

12. On 18th September 2019, the charge came to be framed against the applicant and other co-accused by the Special Judge, Palanpur, for the offence under the N.D.P.S. Act and other related offences.

13. It also appears that being dissatisfied with the order passed by this Court dated 07/03/2019 rejecting the bail application, an SLP was preferred before the Supreme Court being Special Leave to Appeal [Criminal] No.2919 of 2019. The Supreme Court, on 9th May 2019, passed the following order :

“Heard learned counsel for the petitioner and perused the relevant material.

In view of the liberty granted to the petitioner by the High Court in paragraph 38.3 of the order that if the trial does not get concluded within the period of six months, the applicant shall be at liberty to approach this Court once again, we are not inclined to interfere. The special leave petition is, accordingly, disposed of. We make it clear that we have not expressed any opinion on the merits of the case.”

14. I also take notice of the fact that against the order of remand passed by the J.M.F.C., Palanpur, a Criminal Revision Application No.1088 of 2018 was filed by the State of Gujarat before this Court and a learned Single Judge of this Court passed the following order dated 11th September 2018 :

“16. This Court is subjectively satisfied that for unearthing deep rooted conspiracy which has been alleged to have been hatched by high profile persons is required to be investigated thoroughly giving full free hand to the Special Investigating Team and for which custodial interrogation for longer period is needed and this Court is satisfied to hand over the police custody for a period of 10 days commencing from tomorrow morning at 10.00 a.m.

17. It is required to be noted that Mr.Syed repeatedly drawn the attention of this Court as regards the proceedings of the crime registered at Rajasthan which has been carried upto the Apex Court wherein the proceedings are stayed and leave is granted and the same is pending till now. As noted above, this Court is subjectively satisfied that this case is totally distinct and separate and separate crime has been

registered and the complainant himself has been turned out to be the accused in the present case registered at Palanpur Police Station.

18. For the reasons recorded above, the present application deserves to be allowed. Accordingly, this application is allowed. Learned Magistrate concerned is directed to hand over the custody of the present respondents accused commencing from 12.9.2018 at 10.00 morning for about 10 days i.e. upto 21.9.2018 till 5.00 p.m. and thereafter on completion of remand period, learned Magistrate shall secure the presence of the present respondents accused for handing over to the judicial custody in accordance with law.

19. It is needless to say that the observations made hereinabove are made only for the purpose of deciding the present application and therefore, the court concerned may not be influenced by any of the observations made hereinabove while deciding the trial or proceedings any further.”

15. Thus, the picture that emerges from the events noted above and the materials on record is, that the trial has already commenced. It is a settled position of law that once the charge is framed, the trial is deemed to have commenced. At this stage, once again the applicant has come up before this Court with the present application, which can be termed as a frivolous application, preferred only with a view to see that the trial does not proceed further.

16. The review/recall of the order passed by this Court dated 3rd April 2018 is prayed for on the following grounds :

(A) It was not brought to the notice of this Court that in connection with the F.I.R. being C.R. No.I-216 of 1996 registered at the Palanpur City Police Station, the investigating agency had filed an 'A' summary report dated 27th February 2000, and on the said 'A' summary report, the Special Judge had issued notice to the Public Prosecutor vide order dated 22nd March 2000.

(B) It is sought to be argued by the learned counsel appearing for the applicant that, had this fact been brought to the notice of this Court, then probably, this Court might have declined to issue any directions for the constitution of a Special Investigation Team for the purpose of investigation of the F.I.R. bearing C.R. No.I-216 of 1996 registered at the Palanpur City Police Station. Carrying this argument further, the learned counsel would submit that once an 'A' summary report is filed, then the High Court would be precluded from exercising its extraordinary jurisdiction under Article 226 of the Constitution of India for the purpose of constituting a Special Investigation Team and ordering investigation into the F.I.R. by such Special Investigation Team.

17. In support of the aforesaid submission, the learned counsel has placed reliance on the decision of the Supreme Court in the case of Ram Lal Narang Vs. State (Delhi Administration) reported in AIR 1979 SC 1791 and in the case of Gangadhar Janardan

Mhatre Vs. State of Maharashtra and Others reported in AIR 2004 SC 4753.

18. The second submission of the learned counsel is that there has been no fair investigation by the Special Investigation Team.

19. The third submission is that on the date of the arrest of the applicant, there was no cogent or convincing materials to connect the applicant with the alleged crime and the last submission of the learned counsel is that the investigation has already been conducted by the Rajasthan Police.

20. The learned counsel further pointed out that his client, i.e. the applicant, has preferred a fresh bail application, which is being heard by a learned Single Judge of this Court who had earlier rejected the bail application. He would submit that all the aforesaid contentions have been raised before the learned Single Judge for the purpose of bail, but in view of the judgment and order passed by this Court, the review or recall of which is prayed for, the learned Single Judge is not inclined to look into the above noted contentions.

21. The learned counsel would submit that in such circumstances, the order passed by this Court dated 3rd April 2018 be recalled. According to the learned counsel, once the order is recalled by this Court, then all the subsequent proceedings undertaken could be declared as illegal.

22. On the other hand, this application has been vehemently opposed by Mr. Mitesh Amin, the learned Public Prosecutor

appearing for the State of Gujarat. Mr. Amin vehemently submitted that the present application deserves to be rejected with costs as the same is nothing but gross abuse of the process of law. The learned Public Prosecutor would submit that the applicant is in the habit of filing such frivolous applications, and the only idea in preferring such frivolous applications is to see that the trial does not commence. Mr. Amin would submit that in the first place, such application seeking recall or review of the judgment and order is not maintainable, more particularly, when the very same judgment and order passed by this Court was challenged before the Supreme Court and the Supreme Court has affirmed the judgment and order of this Court.

23. Mr. Amin would submit that none of the grounds as raised on behalf of the applicant for the purpose of recall of the order could be said to be tenable in law and that they do not merit any consideration. Mr. Amin would submit that just because an 'A' summary report was filed, the same would not preclude the High Court in exercising its extraordinary jurisdiction under Article 226 of the Constitution of India for the purpose of constituting a Special Investigation Team to investigate into a very serious offence. Mr. Amin pointed out that although the 'A' summary report was filed, yet no final order was passed by the Court concerned on the such 'A' summary report. Besides the same, Mr. Amin pointed out that the 'A' summary report was filed with a prayer to accept the same with the permission to continue with the investigation. Mr. Amin would submit that the 'A' summary report would mean that the offence is committed, but the offenders are not known.

24. Mr. Amin would submit that after due consideration of all the relevant aspects of the matter, this Court passed an order directing the State Government to constitute a Special Investigation Team and carry out the investigation of the F.I.R. Accordingly, the Special Investigation Team was constituted and the investigation was carried out by such team. The investigation concluded with the filing of the charge-sheet. The charge-sheet filed against the applicant and the other co-accused constitutes the incriminating materials sufficient enough to put the accused persons on trial. Mr. Amin would submit that none of the other grounds as urged on behalf of the applicant could be said to be tenable in law for the purpose of recalling of the order passed by this Court.

25. In such circumstances referred to above, Mr. Amin, the learned Public Prosecutor, prays that there being no merit in this application, the same be rejected with costs.

26. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for the consideration of this Court is, whether the judgment and order passed by this Court should be recalled on the grounds raised on behalf of the applicant.

27. I have no hesitation in observing that the filing of the applications of the present type is nothing but last ditched efforts on the part of the applicant to see that the trial does not proceed further. Such attempts needs to be condemned in strong words. Having regard to the developments that have taken place after this Court passed the order, it is too much on the part of

the applicant to come to this Court and pray that the order be recalled, and that too, on flimsy grounds as urged. This litigation is now almost more than two decades old. After due consideration of all the relevant aspects of the matter and materials on record, this Court thought fit to pass appropriate directions for the constitution of a Special Investigation Team, so that such team can carry out effective investigation of the F.I.R. In the order passed by this Court, a fine distinction has been drawn between the prosecution instituted within the State of Gujarat and the proceedings, which are pending in the State of Rajasthan. The filing of the 'A' summary report or any other report can hardly be a ground to preclude this Court from exercising its extraordinary jurisdiction under Article 226 of the Constitution of India, if the occasion demands in the interest of justice. It is too much on the part of the applicant to say that as the investigation was completed and an 'A' summary report was filed, this Court ought not to have entertained the two writ-applications and pass an order for the constitution of a Special Investigation Team. The facts of this case need not be repeated. The more they are recalled, it is more painful. Unfortunately, the police officers are involved in this crime along with a former Judge of this High Court.

28. As on date, there is a charge-sheet on record. I would not like to go into the evidence forming part of the charge-sheet. It is now for the trial Court to proceed with the recording of the evidence. The guilt or the innocence of the accused persons will be now determined by the trial Court on conclusion of the trial.

29. The two decisions of the Supreme Court upon which the strong reliance has been placed is also thoroughly misconceived.

30. In Ram Lal Narang (supra), the Supreme Court was dealing with the facts and circumstances of a case where two FIRs were lodged and two charge-sheets were filed. The Supreme Court took note of the fact that the conspiracy which the subject-matter of the second case could not be said to be identical with the conspiracy which was the subject-matter of the first one, and further, the conspirators were different; although, the conspiracy which was the subject-matter of the first case may perhaps be said to have turned out to be a part of the conspiracy which was the subject matter of the second case. After advertent to the various facets, the Supreme Court opined that occasions may arise when a second investigation started independently of the first may disclose wide range of offences including those covered by the first investigation. Being of such view, the Supreme Court did not find any flow in the investigation on the basis of the subsequent FIR.

31. In the case of Gangadhar Janardan Mhatre (supra), after advertent to Sections 156(3), 169, 173, 178, 190 as well as Section 200 of the Code of Criminal Procedure, the Supreme Court concluded that instead of availing remedy under those provisions, a writ petition in such cases is not to be entertained. The principle enunciated in Gangadhar Janardan Mhatre (supra) is that if any person is aggrieved by the inaction on the part of the police, or not getting proper response, there are adequate remedies provided under the Code and it is for such person to seek relief with the aid of those provisions. The ratio as discernible from the Supreme Court decision in the case of Gangadhar Janardan Mhatre (supra) cannot be applied by a

straight-jacket formula. If the occasion demands, the High Court may be justified in exercising its writ jurisdiction as the protector of civil liberties of the citizens. We may remind the applicant of a later decision of the Supreme Court in *State of West Bengal v. Committee for Protection of Democratic Rights*, (2010)3 SCC 571, which reads as follows : (SCC p.602, para 69)

“69. In the final analysis, our answer to the question referred is that a direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. Being the protectors of civil liberties of the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly.”

32. In view of the above pronouncement, in order to protect the civil liberties, fundamental rights and more particularly Article 21, this High Courts can very well exercise the power, no doubt, cautiously and in exceptional situations. As noted above, the facts of this case are so gross that this High Court had to exercise its writ jurisdiction and issue appropriate directions for constituting a Special Investigating Team. Ultimately, the Special Investigating Team carried out the investigation and the result of the same is filing of the charge-sheet with incriminating materials against the applicant herein and other co-accused.

33. There is no good reason for this Court to once again look into the order on any of the grounds, which have been put forward. In fact, there was no suppression worth the name of any material fact. I am constrained to observe that if the applicant continues to keep on thwarting the due process of law by adopting such dilatory tactics, then some stern steps may have to be taken against the applicant in accordance with law. No wonder a Division Bench of this Court in the case of the very same applicant while deciding the Criminal Misc. Application (for suspension of sentence) No.1 of 2019 in Criminal Appeal No.1492 of 2019 had to observe as under:-

“.....Having regard to the said orders, it appears that the applicant has scant respect for the Courts and is in the habit of misusing the process of law and scandalizing the Court....”

34. The Supreme Court in the case of the very same applicant in a reported decision in (2016) 1 SCC 1 in Paragraph-65 observed as under:-

“65.....Thus the petitioner is guilty of suppressio veri and suggestio falsi. He has suppressed the enclosures which he ought to have filed and ought not to have made false allegations in the writ petition that SIT was exchanging sensitive and confidential information with the then AAG. It is unfortunate that on the one hand petitioner has prayed for appointment of SIT and on the other has not spared SIT appointed by this Court and has made false allegations

against it. The conduct of the petitioner cannot be said to be desirable.”

35. The aforesaid observations of this Court as well as the Supreme Court reflects on the conduct of the applicant. It speaks for itself.

36. In the result, this application fails and is hereby rejected.

/Aruna/Moinuddin

(J. B. PARDIWALA, J)

