

**Sessions Case No. 152/02 and Others.****Order below Exh. 1577.**

1. I have heard learned advocate of the victims Shri S.M.Vora and learned Special P.P. Shri R.C.Kodekar. I have also heard learned advocate for the accused persons Shri R.P.Mogera.
2. I have perused this application and records of the case and the orders and directions passed by the Hon'ble Supreme Court.
3. The learned advocate for the victims Shri S.M.Vora has submitted that in present case as per the direction of the Hon'ble Supreme Court Special Investigating Team (SIT) has been constituted and SIT has further investigated the case and has submitted additional charge-sheets and has arranged additional accused persons. The learned advocate has further submitted that as per direction of the Hon'ble Supreme Court, SIT is further investigating the case and has collected some evidence, but SIT has not produced such additional evidence before this Court. Therefore, on behalf of the victims additional documentary evidence has been produced with D.E. List vide exhibit 1578 in this case. In this D.E. List list the documentary evidence about the telephone calls details of Joint Police Commissioner Shri M.K.Tondon, Police Commissioner, Ahmedabad City Shri P.C.Pande and Dy. Police Commissioner Zone-IV, Shri P.B.Gondia has been produced.
4. The learned advocate for the victims has further submitted that referring to the documentary evidence of the phone call details of the police officers, Joint Police Commissioner Shri M.K.Tondon, Police

Commissioner, Ahmedabad City, Shri P.C.Pande and Dy. Police Commissioner Zone-IV Shri P.B.Gondia and looking to the evidence of the witnesses produced by the prosecution side in this case, it appears that there is ample material against the Joint Police Commissioner Shri M.K.Tondon, Police Commissioner Shri P.C.Pande and Dy. Police Commissioner Zone-IV Shri P.B.Gondia to arrange them as accused in this case by this Hon'ble Court under Section 319 of Criminal Procedure Code 1973 ( In short 'the code'). The learned advocate further submitted that looking to the evidence, it further appears that at relevant time ACP, Crime Branch Shri S.S.Chudasama had investigated this case. But, he has intentionally not properly investigated the case and considering the evidence produced in this case he is also required to arrange as an accused under Section 319 of the Code. Therefore, this application produced by the victims is required to be allowed and four police officers be arranged as accused persons under Section 319 of the Code.

5. The learned advocate for the victims has argued in details, but at present it is not necessary to mention detail arguments of the victims' advocate.
6. The Special P.P. Shri R.C.Kodekar has submitted that earlier also on behalf of the victims, an application was made to arrange police officer Shri M.K.Tondon as accused but that has been not accepted by this Court. It is further submitted that, in this case the evidence of the prosecution side is completed and further statement of the accused persons has also been recorded under Section 313 of the Code and the case is pending for the arguments. Therefore, in this case the arguments are required to be

submitted by the prosecution and accused persons. But, to prolong the matter on behalf of the victims such false and frivolous applications are being filed and matter is being delayed. The learned Special P.P. Shri R.C.Kodekar has further submitted that as per the direction of the Hon'ble Supreme Court passed in Writ Petition (Criminal) No.109 of 2003, Special Investigation Team (SIT) is constituted by the Hon'ble Supreme Court and SIT has further investigated the case and additional charge-sheets have been submitted and other persons have been arranged as accused persons and in all 67 persons have been arranged as accused persons. The learned Special P.P. has further submitted that as per the direction of the Hon'ble Supreme Court, SIT has further investigated the case against the police officers and other persons and investigation report has been submitted to the Hon'ble Supreme Court and as per the direction of the Hon'ble Supreme Court the papers of the said report has been given to the learned amicus curie advocate Shri Ramchandran appointed by the Hon'ble Supreme Court, and as per the direction of the Hon'ble Supreme Court the learned amicus curie has to submit report to the Hon'ble Supreme Court about, whether offence is made out against any other persons or not. Therefore the SIT is not required to submit report of the investigation to this Hon'ble Court and this Court is not required to pass any order to arrange any police officer as accused.

7. The learned Special P.P. has further submitted that joint Police Commissioner Shri M.K.Tondon, Police Commissioner Shri P.C.Pande and Dy. Police Commissioner Zone-IV Shri P.B.Gondia have done their job considering situation of the day and they had to do their duty as per situation of the day, as per satisfaction of themselves. We cannot conclude and criticise the decision write or wrong on hypothetically surmises. Therefore,

on prayer of the victims the police officers may not be arranged as accused persons. The learned Special P.P. has further submitted that Shri S.S.Chudasama, ACP, Crime Branch has investigated the case and he has done his job satisfactorily. The prosecution has produced and proved the injury certificates and other documentary evidence and therefore it cannot be said that Shri S.S.Chudasama has intentionally not properly investigated the case and has committed criminal offences. The learned Special P.P. has further submitted that even in this application the victims have not submitted what offences have been committed by the police officers and the application is wag and is filed to prolong the matter. Hence this application deserves to be dismissed.

8. In this case the evidence of the prosecution side is completed and further statement of the accused persons has also been recorded under Section 313 of the Code and the case is pending for the arguments.
9. After production of the evidence by the prosecution side and before giving judgment the Court trying the criminal case may join any person as accused under Section 319 of the Code, if there is evidence against such person to the satisfaction of the Court. But, whether at this stage in this case any such order may be passed under Section 319 of the Code is to be considered.
10. In this case Hon'ble Supreme Court has passed certain directions in Writ Petition (Criminal) No. 109 of 2003. The Hon'ble Supreme Court has constituted Special Investigation Team (SIT) and further investigation has been directed. It further appears that SIT has further investigated the case and additional charge-sheets have been submitted to the Court and other



persons have been arranged as accused persons and total 67 persons have been arranged as accused persons. It further appears that as per the direction of the Hon'ble Supreme Court, SIT has further investigated the case against the police officer Shri M.K.Tondon and other police officers and other persons and SIT has submitted report to the Hon'ble Supreme Court. It further appears that Hon'ble Supreme Court has directed to give papers of the report of the further investigation to the learned amicus curie advocate Shri Ramchandran appointed by the Hon'ble Supreme Court and has directed the learned amicus curie to give report to the Hon'ble Supreme Court where any other persons may be arranged as accused or not and the Hon'ble Supreme Court has kept the matter on 28/07/2011.

11. In Writ Petition (Criminal) No. 109 of 2003, the Hon'ble Supreme Court has passed direction and as per the direction of the Hon'ble Supreme Court SIT has further investigated the case and report is submitted by the SIT to the Hon'ble Supreme Court and the matter is pending before the Hon'ble Supreme Court whether Shri M.K.Tondon and other police officers and other persons may be arranged as accused or not. Therefore it is against judicial discipline to pass any order by this Court by relying upon the documentary evidence of phone calls of the police officers and to discuss the matter about whether four police officers may be arranged as accused or not as per the prayer of the victims made in this application. The Hon'ble Supreme Court is seized with the matter. Therefore, it is not proper to simultaneously consider the documentary evidence of phone calls etc. produced with D.E. List exhibit 1578 by the victims and to discuss the matter whether four police officers may be arranged as accused as prayed in this application by the victims. However, this Court may consider the matter

whether any other persons may be joined as accused or not under Section 319 of the Code at the time of final arguments of the case.

12. As discussed above, the SIT has further investigated the case and report of the investigation is submitted before the Hon'ble Supreme Court and Hon'ble Supreme Court has seized with the matter about Mr. M.K.Tondon and other police officers and other persons may be arranged as accused or not and therefore at this stage this Court cannot entertain this application.

13. Therefore, at this stage no order is passed in this application. The victims may submit arguments about this application at the time of the final argument of this case.

Pronounced in the open Court on 31<sup>st</sup> May, 2011.

Seen  
Gendu  
B.P.P  
31-5-11

Seen  
Rohin Mehta  
Adv. for Acc.  
31/5/11

Seen  
Advocate  
of victim  
31/5/11

(B.J.Dhandha)  
Judge, Designed Court,  
City Civil & Sessions Court,  
Ahmedabad.