

Exh.23

In the Court of learned Presiding Officer, 3<sup>rd</sup> Fast Track Court and Additional Sessions Judge, Panchmahals District at Godhra.

Sessions Case No.18/04

Complainant :- The State

Applicants :-

- (1) Husain Habib
- (2) Firoz Shabbirbhai
- (3) Mastu Ashraf
- (4) Dasodbhai Umedbhai
- (5) Yasinbhai Nathubhai

Versus

Accused : - Kamlesh Masur Damor and others.

Regarding handing over possession of the identified dead bodies for funeral ceremony as per the religious rituals in view of the order passed by the Honourable Supreme Court in Special Leave to Appeal (Criminal) No.(S) 4816/2007 in Criminal M.P. No.15666/2007 dated 1/2/2008.

The applicants humbly submit before the Honourable Court that :-

:1: In respect of the case being I C.R.No.11/2002 of Khanpur Police Station for the heinous killing in the communal riots in village Pandarwada of Panchmahals District and in respect of the complaint being C.R.No.13/2002, as the skeletons have been found of the dead persons from the different places which were buried directly without following the due process of law who were the persons of the applicants and other communities of Muslim and as no investigation was made and no procedure was carried out as per the provisions of the law, the relative of the applicants being Aminabibi Habib Rasul had filed Special Criminal Application No.1875/2005 before the Honourable Gujarat High Court and the Honourable Gujarat High Court had passed the interim order on 29/12/2005 to get the D.N.A. test of the skeletons and residue through the Red Hill Laboratory, Ahmedabad through the C.B.I.

:2: As the Honourable Gujarat High Court rejected the prayer to carry out the investigation of the aforesaid both the offences through the C.B.I. on behalf of the applicants, the applicants filed S.L.P. App.(Cri) No.4816/2007 before the Honourable Supreme Court which is pending before the Honourable Supreme Court at present and upon filing the application before the Honourable Supreme Court for taking over the possession and to have funeral ceremony as per the religious rituals of the dead bodies and residue of the relatives of the applicants, the Honourable Supreme Court has passed the order to get the relief in this regard and if such an application is made, it was directed to dispose of the same as early as possible as per the provisions of the law.

:3: Aminabibi Habib Rasul and Citizen Justice and Peace have filed the application before the Honourable Court for getting all the dead bodies and residue which were identified in D.N.A. test and having got the advise that all the heirs of all the identified dead bodies shall pray for such relief, so as to see that there may not be any technical defect, all the applicants are filing this application before this Honourable Court.

In the said case, the identification of the following dead bodies has been done.

Name	Resident of
(1) Habibbhai Ashrafbhai	Pandarwada
(2) Bismilla Habib	-“-
(3) Salim Shabbirbhai Shaikh	-“-
(4) Zakir Dasodbhai Umedbhai	Virpur
(5) Abbasbhai Nathubhai	-“-
(6) Yasinbhai Sebabhai Saiyed	-“-
(7) Mustaq Fakir Mohammad	-“-
(8) Abdulbhai Saiyed	-“-

:4: The Honourable Court has got jurisdiction to hear and decide the said application because in respect of residue of identified and unidentified dead bodies, the prosecution relies on the alleged P.M.Note of the dead bodies of the offence being I C.R.No.11/2002 and C.R.No.I 13/2002 of Khanpur Police Station in the aforesaid Sessions Case and for the said dead bodies, relies on the depositions of the concerned witnesses being the oral evidence and inquest panchnama / P.M. Report and, therefore, the

Honourable Gujarat High Court passed the order so as to get the D.N.A. test through the officer of the C.B.I. and as the order has been passed in the proceedings before the Honourable Supreme Court in respect of aforesaid both the offences, the Honourable Court has jurisdiction to hear the application of the applicants and the application of Aminabibi Habib Rasul.

:5: If the dead bodies and residue (skeletons) are handed over to the applicants, no prejudice or loss is going to be caused to the accused. The said skeletons and residue are not the residue being muddamal of the said Sessions Case.

:6: The dead bodies of the relatives of the applicants are at present in possession of the police and the Government and the same are in open and it is necessary in the interest of justice to have the funeral ceremony of all identified dead bodies after following and as per the religious rituals and if the same is not done, the religious feelings which have been hurt will continue to hurt and it is likely that it will increase.

:7: The applicants, therefore, humbly pray that :-

Be pleased to pass the order to hand over the possession of the dead bodies, skeletons and residue of the relatives of the applicants which have been identified in the D.N.A. test in respect of the human residue which has been conducted at Red Hill Laboratory, Hyderabad for carrying out funeral ceremony as per the religious rituals.

:8: The vakilatnama is produced herewith.

Place : Godhra

Sd/- Illegible

Date : 16/4/2008

Advocate for the Applicants

[Red Hill Laboratory in Hyderabad]

Sd/- Shaikh Mastubhai Ashrafbhai

Sd/- Shaikh Firozbhai Shabbirbhai

Sd/- Shaikh Husainbhai Habibbhai

ORDER

Notice to D.G.P. & accused.

Sd/- Illegible 16.4.08

Addl.Sessions Judge

3<sup>rd</sup> F.T.C. Godhra.

Order below the application Exh.23 in Sessions Case No.18/2004 :-

(1) By filing this application, the applicants have stated that relatives of the applicants have been killed in respect of the offence being I C.R.No.11/2000 and 13/2000 of Khanpur Police Station and without following due process of law, they have been buried directly and upon receipt of the skeletons of the dead persons who were buried at different places and as there was no investigation and the procedure followed as per the provisions of the law, the relative of the applicants being Aminabibi Habib Rasul had filed Special Criminal Application No.1875/2005 before the Honourable Gujarat High Court. The Honourable Gujarat High Court passed the interim order on 29/12/2005 to get D.N.A. test of the skeletons and residue at Red Hill Laboratory, Hyderabad through the C.B.I. Thereafter,

having requested by the applicants to carry out the investigation through the C.B.I. by way of application before the Honourable Gujarat High Court and having rejected the same, S.L.P. Application (Criminal) No.4816/2007 was filed before the Honourable Supreme Court against the said order wherein the Honourable Supreme Court has directed to make the application before trial Court for taking the possession and to have funeral ceremony as per the religious rituals of the dead bodies and residue of the relatives of the applicants and, therefore, by filing this application, the applicants have prayed to hand over possession and to have funeral ceremony as per the religious rituals of the dead bodies and human residue of their relatives.

(2) Heard the submissions of the parties in respect of the said application and perused the affidavit Exh.57 of Shri R.M.Jhala, Deputy Police Superintendent which is produced on behalf of the Government and also perused the pursis Exh.59 produced on behalf of the applicants.

(3) Looking to the facts emerged in this case, it appears that the Honourable Gujarat High Court has passed the order in Special Criminal Application No.1875/2005 on 29/12/2005 to get D.N.A. Test at Red Hill Laboratory, Hyderabad of the dead bodies in respect of the offence being I CR No.11/2000 of Khanpur Police Station and I CR No.13/2002 of Khanpur Police Station. Further, considering the submissions made by the parties, it appears that D.N.A test of the said human residue has been carried out. Considering the facts emerged in this case, it appears that final order in Special Criminal Application No.1875/2005 has been passed on 8.12.2006. In this case, it appears that Aminabibi Habib Rasul is the applicant of Special Criminal Application No.1875/2005 and also it appears that she has

challenged the order dated 8.12.2006 before the Honourable Supreme Court by way of Special Leave to Appeal (Criminal) No.4816/2007 and in the said case, it is requested for handing over back the identified human residue which have been sent for D.N.A test to their relatives wherein the Honourable Supreme Court has passed the order on 1.2.2008 that as the applicant has sought the permission to withdraw this application, the permission is granted and the petitioner shall file the application in this regard before the trial Court which is required to be decided on merits. Thus, considering all the facts produced in this case, it appears that this application has been filed as they can file the application before the trial Court for handing over the identified human residue to their relatives.

(4) Looking to the facts emerged in this case, this chargesheet is produced vide Sessions Case No.18/2004. Looking to the order passed in Special Criminal Application No.1875/2005, it appears that the same has been passed in respect of I CR No.11/2000 and 13/2002 of Khanpur Police Station and it also appears that the said Sessions Case No.18/2004 has also arisen in respect of I CR No.13/2002 of Khanpur Police Station. Further, the original accused in this case have stated by filing the pursis at Exh.32 and Exh.33 that the accused have no objection if any order is passed in the said case as per the law. Further, having perused the affidavit at Exh.57 of the Investigating Officer, no fact has been stated that they have any objection if the said residue is handed over to their relatives and further it does not appear that these residue are not used as muddamal in any other offence. Thus, considering the facts emerged in this case, it does not appear that any injustice is going to be caused to any party if the identified human residue in

this case are handed over to their relatives for carrying out funeral ceremony as per the religious rituals.

(5) Having perused the pursish at Exh.59 in this case given by learned advocate on behalf of the applicants, that if the residue of the identified dead persons in D.N.A. test are given to the heirs of the dead persons, they will follow the funeral ceremony as per the religious rituals at Pandrawada Graveyard and they will enter the entry regarding the funeral ceremony of the dead persons in the register of the trustee of the graveyard after drawing the panchnama in the presence of the panchas and the trustees of the graveyard and it is declared by the purshis that they are prepared to put the nameplate of the deceased persons.

(6) Considering all the facts emerged in this case, if the residue of the dead persons are handed over to the heirs of the dead persons in the presence of the Investigating Officer and the funeral ceremony is carried out as per their religious rituals and if the identity is kept in this regard, I am of the opinion that it would serve the interest of justice and in that circumstances, the following order is passed in the interest of justice.

**-: O R D E R :-**

Therefore, the application Exh.23 is allowed and the residue of the dead persons identified at Red Hill Laboratory, Hyderabad be handed over to their relatives after verifying and in the presence of the Investigating Officer by drawing the panchnama and also to draw the panchnama of the place where the funeral ceremony takes place of the residue of the said dead persons in the presence of their relatives and to keep identity thereof and to submit the report by the Investigating Officer after completing the procedure.

Pronounced and read over today on 16<sup>th</sup> December 2008 in the open Court.



Place : 16/12/08

Sd/-

Place : Godhra

(V.S.Dave)

Additional Sessions Judge,

Panchmahals, Godhra.

Sd/- Illegible

Operated by.

Sd/- Illegible

Compared by.

This is to certify that this is a true copy. Date : 24 DEC 2008.

Sd/- Illegible

24/12/08

Registrar,

District Court, Godhra.