

IN THE CITY CIVIL AND SESSIONS COURT AT AHMEDABAD
SESSIONS CASE NO. 152 OF 2002
(C.R. No. I-67/2002 of Meghaninagar Police Station)

Applicant:

- 1. State of Gujarat

VERSUS

Respondents:

- 1. Kailash Lalchandbhai Dhobi
& Others

ORDER BELOW EXH. 1748

1. I have heard learned Special P.P. Mr. R.C. Kodekar for SIT - prosecution and Mr. S.M. Vora, LA for the victims.

2. In this case about 66 accused have been arraigned by the prosecution and trial is held against them for the offence registered as C.R. No. I-67/2002 - Meghaninagar Police Station. The evidence of the prosecution side is completed and arguments are also heard and now the prosecution, accused and victims have to file their written notes of arguments regarding the trial against the accused.

3. In this case during the trial on behalf of the victims, an application is filed under Section 319 of the Code of Criminal Procedure, 1973 ("Code" for short) at Exh. 1577 on 12/5/2011 and in this application the victims have prayed to arraign following 4 police personnels as accused under

Section 319 of the Code:

- (1) Shri M.K. Tandon (Joint Police Commissioner)
- (2) Shri P.C. Pandey (Police Commissioner, Ahmedabad City)
- (3) Shri P.B. Gondiya (D.C.P. Zone-IV)
- (4) Shri S.S. Chudasma (A.C.P., Crime Branch)

The said application is heard by the Court and this Court has passed following order in para 13 of the order on 31/5/2011 :

"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."

4. At this stage it would be proper to reproduce the observations of the Hon'ble Supreme Court for the word "evidence" occurring in sub-section (1) of Section 319 of the Code. In the case of Hardeep Singh v. State of Punjab and others, reported in AIR 2009 SC 483, the Hon'ble Supreme Court has held that :

"The word "evidence" occurring in sub-section (1) of S. 319 is used in comprehensive and broad sense which would also include the material collected by the Investigating Officer and the evidence which comes before the Court and from which the Court is satisfied that person not arraigned before it is involved in the commission of the crime."

5. In this case the final arguments of the case are heard and therefore this application Exh. 1577

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was also to be heard by the Court. But, before starting hearing of this application, on behalf of the victims an application was filed at Exh. 1661 on 3/10/2011 and in this application the victims have inter alia stated that as per the directions of the Hon'ble Supreme Court, the SIT has investigated the complaint filed by Zakia Nasim Ahasan Jafri in present offence registered as C.R. No. I-67/2002 - Meghanagar Police Station and therefore, the directions shall be passed against SIT that it shall produce all investigation papers and report pertaining to this case carried out by the SIT and report in this case.

6. On behalf of the SIT, reply was submitted at Exh. 1664 and the learned Special P.P. Mr. R.C. Kodekar had submitted before the Court that after filing of the investigation report to the Court having jurisdiction for taking cognizance as per the directions of the Hon'ble Supreme Court, the papers pertaining to this case will be submitted in this case and the prosecution has no objection for production of the same.

7. As per the reply submitted by the Investigating Officer at Exh. 1064 in this case and as per the submission made by the Special .P. Mr. R.C. Kodekar before this Court, this Court has passed an order below application Exh. 1661 filed by the victims on 09/11/2011 and has ordered that after filing of the report/charge-sheet as per direction of the Hon'ble Supreme Court taking cognizance of the

offence, the Investigating Officer shall submit the copies of the statements, documents etc. investigation papers in this Court.

8. Thereafter as per the directions of the Hon'ble Supreme Court, the SIT has filed report and investigation papers before the learned Metropolitan Magistrate, Court No. 11, Ahmedabad (the original complainant has alleged that SIT has not produced all documents). But, copy of any document is not produced in this case and therefore, on behalf of the victims an application Exh. 1722 is filed in this Court on 22/3/2012. In this application Exh. 1722 during the hearing, learned Special P.P. Mr. R.C. Kodekar had made submissions to grant time and therefore this Court has granted time upto 23/5/2012 to produce the document as prayer made by the learned Special P.P. Para 5 and 6 of the order passed by this Court dated 11/4/2012 are reproduced below :

"5. Learned Special Public Prosecutor Mr. Kodekar has submitted that the investigation report, materials and documents, including the statement are very bulky and runs into 25000 pages and to produce the relevant papers pertaining to the offence involved in this case from the said bulky record the Investigation Officer and the learned Special Public Prosecutor are required to go through the report, materials and documents and therefore, practically it will take a reasonable time and in any case will not be able to produce the documents before 25.05.2012. It is therefore requested to grant time upto 25.05.2012.

6. Considering the above submissions, I pass the following order.

5
O R D E R

The Investigation Officer is granted time upto 23.05.2012 to produce the documents."

9. On behalf of the Investigating Officer of the SIT, an application was filed on 10/4/2011 at Exh. 1730 and the prayer was made for deferment of the implementation of the order passed on 09/11/2011 to a later stage i.e. till the examination of the report along with the documents and passing of necessary orders by the learned Metropolitan Magistrate, Court No. 11, Ahmedabad. But, the learned Special P.P. Mr. R.C. Kodekar had consented to produce documents and sought for time and accordingly time was granted upto 23/5/2012.

10. Thereafter on 23/5/2012, the Investigating Officer of the SIT has filed the present application Exh. 1748 in furtherance of the application Exh. 1730 and has requested the Court to defer the order for production of copy of the investigation report and investigation papers. In this application, the following prayer is made by the Investigating Officer of the SIT:

"It is therefore, most respectfully prayed that production of relevant portion of SIT report, copies of statement of witnesses and other relevant material may kindly be deferred till final order of the Ld. 11th Court of Metropolitan Magistrate on the Report of the SIT, its recommendations, findings etc. after hearing the concerned parties."

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11. The learned Special P.P. Mr. R.C. Kodekar has argued that in the present offence registered as C.R. No. I-67/2002 with Meghaninagar Police Station, the complaint of Zakia Nasim Ahesan Jafri is investigated by the SIT as per the directions of the Hon'ble Supreme Court and as per the directions of the Hon'ble Supreme Court, the SIT has to submit report and investigation papers in the Court of the learned Metropolitan Magistrate, Court No. 11, Ahmedabad and copies thereof have also been supplied to the original complainant Zakia Nasim Ahesan Jafri and the learned Metropolitan Magistrate has to consider the report and investigation papers and has to decide whether any offence is committed by any person arraigned in the complaint by Zakia Nasim Ahesan Jafri or not. It is further submitted that the complainant Zakia Nasim Ahesan Jafri has to convince the learned Metropolitan Magistrate, Court No. 11, Ahmedabad to take cognizance against some persons not recommended to be prosecuted by SIT or may convince to order further investigation by SIT.

12. It is further submitted by learned Special P.P. Mr. R.C. Kodekar that it may kindly be seen that the order of this Court passed on 9/11/2011 is that Investigating Officer of SIT after production of SIT report in the designated Court should file relevant statements of witnesses and documents concerning this case before this Court without any mention for SIT report. As against this order, the request of the victims is for SIT report. From present reply it is clear that they are having the relevant portions of

the SIT reports like the report of Amicus Curiae, phone call records etc. and they are not specifying in any of these applications as to what portion of report, copy of which statement and copy of which document are considered relevant by them for this case and then to seek specific order of this Court. It is further submitted that the Counsel Mr. S.M. Vora for the victims is also Counsel for Smt. Zakia Nasim Ahasan Jafri and in the proceedings before the learned Metropolitan Magistrate, Court No. 11, Ahmedabad, the copy of the SIT report, all the materials collected, running into about 22,000 pages, copies of statements of witnesses running into about 2,000 pages have already been supplied. Thus, the Counsel of victims is very much in a position to now submit before this Court during final arguments as to what portion of SIT report, statement of which witnesses and copy of which documents would be relevant in this trial before this Court. It is further submitted that this Court has ample power under Section 91 of the Code to call for any document at any stage of the trial / proceedings. The only requirement is that the Court will have to issue order to such person for production of document in whose possession the documents are. The learned Special P.P. has further submitted that therefore, it is justifiable and reasonable to allow the prayer made by the SIT for deferment of the order till hearing on SIT report i.e. completion of hearing before Metropolitan Magistrate, Court No. 11, Ahmedabad and orders passed thereon and therefore, this application deserves to be allowed

13. Referring to the rejoinder on behalf of the SIT filed at Exh. 1754 on 18/6/2012, it appears that in this rejoinder also, the same facts have been stated by the Investigating Officer of the SIT.

14. On behalf of the victims, LA Mr. S.M. Vora has argued that in this case the application Exh. 1577 filed under Section 319 of the Code to arraign 4 police personnels as accused is pending before this Court and this application is kept pending for hearing with the arguments of the case at final stage and therefore, to argue out this application by the victims and to decide this application by the Court, the investigation papers pertaining to the said police personnels are required to be produced in this case and therefore, on behalf of the victims an application Exh. 1661 is filed to pass directions against the SIT for production of the relevant investigation papers pertaining to this case. It is further submitted that the SIT has further investigated the case for the same offence registered as C.R. No. I-67/2002 with Meghaninagar Police Station for the complaint filed by Zakia Nasim Ahesan Jafri as per the directions of the Hon'ble Supreme Court and SIT has produced report and investigation papers before the learned Metropolitan Magistrate, Court No. 11, Ahmadabad.

15. LA for the victims has further submitted that for application Exh. 1661 while hearing this application, learned Special P.P. Mr. R.C. Kodekar

had consented before this Court to produce copies of relevant papers pertaining to this case regarding the further investigation carried out by the SIT and prosecution had no objection for the same and therefore relying upon the said undertaking and submission by the learned Special P.P. the Court has passed order for production of the same. Thereafter on behalf of the victims, an application is filed at Exh. 1722 on 22/3/2012 and it was prayed to pass directions to the SIT that SIT shall obey the order and shall produce the relevant papers of investigation on 22/3/2012. This application is heard by the Court on 10/4/2012 and in this application also, the learned Special P.P. has agreed to produce copies of the relevant investigation papers and had sought time upto 23/5/2012 and the Court has granted time upto 23/5/2012. But, on 23/5/2012 SIT has not produced the relevant papers and has filed this application Exh. 1748 and SIT has now declared their intention not to produce copies of the relevant investigation papers. It is further submitted that by way of making prayer for deferment of the order, the SIT seeks review of the earlier order of this Court which is hit by Section 362 of the Code.

16. LA for the victims has further submitted that before the learned Metropolitan Magistrate Court also, the SIT has delayed filing of the investigation report and investigation papers and supply of copies of the investigation report and investigation paper to the original complainant Zakia Nasim Ahesan Jafri and still not produced all papers and in present case

also, the SIT is adhering to the delay tactics and therefore this application deserves to be dismissed.

17. On behalf of the SIT an undertaking is given for production of copies of the relevant investigation papers pertaining to this case from the further investigation carried out by the SIT as per the directions of the Hon'ble Supreme Court and considering the said undertaking, this Court has passed order below Exh.1661 - application of the victims on 9/11/2011 that :

ક: વિ.સ્પે.પી.પી.શ્રી કોટેકર એવી રજૂઆત કરે છે કે, નામદાર સુપ્રિમ કોર્ટના હુકમ મુજબ તપાસનો રીપોર્ટ જે કોર્ટ કોન્સીડર લેવા સક્ષમ છે તે કોર્ટને કરવામાં આવશે અને ત્યારબાદ, આ કેસને લગત જે કાગળો છે તે આ કેસમાં રજૂ કરવામાં પ્રોસીક્યુશનને વાંધો રહેશે નહીં.

જ: નામદાર સુપ્રિમ કોર્ટ ક્રિમીનલ અપીલ નં. ૧૭૭૬/૨૦૧૧ નાં પેરા-૯ માં હુકમ કર્યા મુજબ સીટ તરફથી જે કોઈ કાર્ગીલ રીપોર્ટ જે તે મેજીસ્ટ્રેટ સમક્ષ રજૂ કરવામાં આવે તેની કોપી તથા સર્કિલોનાં લેવાયેલ નિવેદનો તથા બીજા દસ્તાવેજોની નકલો ઠરીયાદીને આપવાનું ડાયરેક્શન આપવામાં આવ્યું છે. આથી વિક્ટીમ્સ પણ તેની નકલો આ કેસમાં રજૂ કરી શકે તેમ છે.

પ: ઉપરોક્ત હકીકતે નીચે મુજબનો હુકમ કરવામાં આવે છે.

--: હુકમ --:

આંક-૧૬૬૪ નાં જવાબ મુજબ નામદાર સુપ્રિમ કોર્ટના હુકમ મુજબ આ કેસની તપાસનાં કાગળો સંલિતનો રીપોર્ટ આ ગુનાનાં કામે જે કોર્ટ કોન્સીડર લેવા સક્ષમ છે તે કોર્ટને કરવામાં આવે ત્યારબાદ, આ કામનાં તપાસ અધિકારીશ્રીએ આ કેસને લગત જે કોઈ નિવેદનો, દસ્તાવેજો વિગેરે તપાસનાં કાગળો હોય તેની નકલ આ કેસમાં રજૂ કરવી."

18. Thereafter as per the directions of the Hon'ble Supreme Court, the SIT has filed report and investigation papers before the learned Metropolitan Magistrate, Court No. 11, Ahmedabad (the original complainant has alleged that SIT has not produced all documents). But, copy of any document is not produced in this case and therefore, on behalf of the victims an application Exh. 1722 is filed in this Court on 22/3/2012. In this application Exh. 1722 during the hearing, learned Special P.P. Mr. R.C. Kodekar had made submissions to grant time and therefore this Court has granted time upto 23/5/2012 to produce the document as prayer made by the learned Special P.P. Para 5 and 6 of the order passed by this Court dated 11/4/2012 are reproduced below :

"5. Learned Special Public Prosecutor Mr. Kodekar has submitted that the investigation report, materials and documents, including the statement are very bulky and runs into 25000 pages and to produce the relevant papers pertaining to the offence involved in this case from the said bulky record the Investigation Officer and the learned Special Public Prosecutor are required to go through the report, materials and documents and therefore, practically it will take a reasonable time and in any case will not be able to produce the documents before 25.05.2012. It is therefore requested to grant time upto 25.05.2012.

6. Considering the above submissions, I pass the following order.

O R D E R

The Investigation Officer is granted time upto 23.05.2012 to produce the documents."

19. While deciding the application of the victims at Exh. 1622, the Court has considered the submissions of the IA for the victims and learned Special P.P. Mr. R.C. Kodekar and has passed order granting time upto 23/5/2012 to Investigating Officer of the SIT to produce the documents. This Court has passed orders and directions to the SIT by relying upon the undertaking given on behalf of the SIT and this Court has passed order and has directed the Investigating Officer of the SIT to produce copies of the relevant papers of further investigation pertaining to this case. Now the SIT is changing its stand and they have prayed to defet the said order for production of the copies of the relevant investigation papers. But, this Court cannot change its earlier order. This Court has below Exh. 1661 passed directions to the SIT and thereafter has granted time upto 23/5/2012 as submitted by the SIT and now this Court cannot review its own order.

20. At this stage the Full Bench judgment of the Hon'ble Supreme Court in the case of Adalat Prasad v. Rooplal Jindal & Others, reported in 2005(1) GLR 546 is relevant. In that case before the Hon'ble Supreme Court, the Magistrate had taken cognizance of an offence and had issued process under Section 202 of the Code for the offence under Section 420 read with Section 120-B of IPC. Thereafter, as per the directions of the Hon'ble High Court, the accused had filed application under Section 203 of the Code before the learned Magistrate and the learned Magistrate had after hearing the parties recalled the

order of summons. That order of the Magistrate recalling the summons was challenged before the Hon'ble High Court on the ground that the Magistrate had no jurisdiction to recall a summons issued under Section 204 of the Code. In that case, the Hon'ble High Court had set aside the said order of the Magistrate by observing that the Magistrate did not have the power to review his own order. Confirming the said view, the Hon'ble Supreme Court has observed and held that the Criminal Procedure Code does not contemplate a review of an order by the Magistrate. Hence in the absence of any review power or inherent power with the subordinate criminal courts, the remedy lies in invoking Section 482 of the Code.

21. In this case, this Court has passed orders by relying upon the submissions and undertakings given on behalf of the SIT and now this Court cannot recall and review its own order. Therefore, considering the facts of this case, this Court cannot allow the prayer made on behalf of the SIT in present application Exh. 1748 and cannot review its earlier orders and therefore this application deserves to be dismissed.

22. Therefore, I pass the following order :

O R D E R

The application Exh. 1748 is dismissed.

14

No separate order is passed below application Exh. 1730 as it has same prayer.

Pronounced in open Court on this 3rd day of July 2012.

(B. J. DHANDHA)
Judge, Designated Court for
Speedy Trial of Riot Cases,
City Civil & Sessions Court,
Ahmedabad.