



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/MISC. CIVIL APPLICATION (FOR CONTEMPT) NO. 1067 of 2022

JAHIRMIYA REHAMUMIYA MALEK
Versus
STATE OF GUJARAT

Appearance:

MR I H SYED, SENIOR ADVOCATE WITH MR PRITHU PARIMAL WITH MR
VISHRUT BHANDARI WITH MR GULREJ SAIYED for the Applicant(s) No.
1,2,3,4,5

MR MITESH AMIN, PUBLIC PROSECUTOR WITH MS VRUNDA SHAH,
AGP for the Opponent(s) No. 1,15,16

MR JAL UNWALA, SENIOR ADVOCATE WITH MS TEJAL A VASHI for the
Opponent(s) No. 10,14,4,7,8

MR PRAKASH JANI, SENIOR ADVOCATE WITH MR SHIVANG P JANI for
the Opponent(s) No. 11,12,13,2,3,5,6,9

CORAM: **HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MR. JUSTICE M. R. MENGDEY

Date : 04/10/2023

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. While dealing with the issue of maintainability of the present application filed under section 12 of the Contempt of Courts Act, 1971, seeking initiation and punishment of respondent Nos.2 to 14 for violation of the guidelines of the Apex Court in case of D.K.Basu Vs. State of West Bengal, 1997 (1) S.C.C. 416, this Court vide comprehensive order dated 12.07.2023 has held the same as maintainable, and further directions were issued to the learned Chief Judicial Magistrate, Kheda at Nadiad to prepare a report recording the role of each of



the respondents after verifying the contents of videos and images placed on record.

2. The learned Magistrate sent his report dated 31.07.2023. By an order dated 11.08.2023, the same was taken on record and copies of the same were also supplied to the respective respondents, and further opportunity was granted to them to respond.

3. Vide order dated 26.09.2023, the matter was ordered to be listed on 04.10.2023 for framing of charge.

4. The present contempt application emanates from an incident, which has taken place on 03.10.2022 at Village Undhela, Taluka Matar, District Kheda during the Garba festive. It is alleged by the applicants that the respondent nos.2 to 14 had illegally detained them and assaulted in the night of 3rd October, 2022 and thereafter, FIR was registered on 04.10.2022 against them for the offence punishable under Sections 34, 143, 147, 148, 149, 295A, 307, 323, 332, 337, 427, 504 and 506(2) of the Indian Penal Code, 1860, wherein the applicants along with others were also arraigned as accused. It is further alleged that on 04.10.2022 at around 2:00 p.m., the applicant



and five others were brought back to Undhela Village Masjid chowk and they were tide to a poll in the middle of the chowk and brutally beaten up by the respondent nos.2 to 14 using Lathis in front of a crowd. It is further alleged that videos of such beating up were recorded and circulated in the public and had also been reported in the press and they were beaten at the instance of the MLA of the Matar Constituency namely Kesharsinh Solanki.

5. The applicants were sent to the medical examinations and thereafter, they were produced before the learned Magistrate on 05.10.2022 in connection with the FIR. The applicants disclosed the incident to the learned Magistrate.

6. The Apex Court in the case of **D.K.Basu** (supra) and subsequently, in the case of Arnesh Kumar Vs. State of Bihar, (2014) 8 S.C.C. 273, has reiterated the law enunciated by the Apex Court, while referring to the provisions of Section 41A of the Cr.P.C., which has been inserted after the judgment of the Apex Court in the case of **D.K.Basu**(supra). The directions issued by the Apex Court, till today, remain in its true and pristine form. Hence, any deviation or violation of such directions or guidelines



would definitely trigger the observations made in paragraph No.37 in the case of **D.K.Basu**(supra). In the case of Ahmed Noormohmed Bhatti vs State of Gujarat and Ors., (2005) 6 S.C.C. 647, after referring to the eleven guidelines declared in the case of **D.K.Basu**(supra), the Apex Court has observed that these guidelines/requirements are in addition to the constitutional and statutory safeguards and do not trim down the various directions given by the Court from time to time in connection with the safeguarding of the rights and dignity of the arrestees.

7. It is alleged by the complainants-applicants that they were brutally beaten in public view on 04.10.2022, after they were detained on 03.10.2022 at 23:00 hours at the night.

8. In the report dated 26.09.2023, filed by the learned Magistrate, the following observations are recorded.

“Conclusion:

1) the respondent No.02-Mr.A.V.Parmar is identified as person in white shirt and blue jeans in the videos, who is seen giving 03-06 stick blows on buttock of applicant no 03-05 (out of which three applicants identified themselves and him in the videos).

2) The respondent No.03-Mr.D.B.Kumavat is identified as man in lightblue shirt and black pants, who is



seen in the videos sitting in the chair and in some screenshots standing in the background. Not seen with stick or beating any applicants.

3) The respondent No.05-Mr.Kanaksingh Laxman Singh is identified as man in orange white checks and dark blue jeans in the videos. His presence is seen in videos of applicant No.03 and 04 holding white pipe and pushing applicants towards Van. Not seen beating the applicants in the videos but can be seen pushing them towards Van. He is seen raising pipe on applicant No.03 in one screenshot photograph.

4) The respondent No.13-Mr Raju Rameshbhai Dabhi (identified by the applicant number 03-05). he can be seen holding hands of the applicants no 03-05 to the pole while respondent No.02 giving blows of the stick on their buttock.

5) No role can be identified by this court, also not identified by the applicants in the Court as to other respondents No.04, 06 to 12 and 14 for beating them in any of the videos in the pendrive and photographs as to alleged incident produced by them."

9. From the aforementioned findings of the learned Magistrate, it is manifest that the respondent No.2 - Mr.A.V.Parmar, the respondent No.3 - Mr.D.B.Kumavar, Respondent No.5 - Mr.Kanaksingh Laxman Singh, the respondent No.13 - Mr.Raju Rameshbhai Dabhi are identified and their presence is shown at the time of incident. No role of any other respondents has been found by the learned Magistrate, neither in the videos nor in the photographs. Hence, we are not inclined to frame charges against the rest of the respondents, except the four respondents as mentioned herein above. The other respondents are ordered to be deleted from the array of parties.



Notice is discharged and contempt proceedings stand closed against them.

10. It is contended by learned senior advocate Mr.Jani that a perusal of the report will indicate that the respondent No.3-D.B.Kumavat has not violated the guidelines of **D.K.Basu**(supra) since the learned Magistrate in his report has recorded that the respondent No.3 is only seen sitting in the chair and is not seen with stick or beating any applicants. It is thus, urged by him that no charge may be framed against him.

11. We do not concur with the submissions raised by learned senior advocate Mr.Jani. The respondent No.3 is/was serving as a Police Sub Inspector. Respondent No.2 is/was the Police Inspector and Respondent Nos.5 and 13 are/were serving as constables. The incident of flogging has happened in broad day light in front of a crowd. The presence of the respondent No.3 at the time and place of the incident is not in dispute. The respondent No.3 has not made any efforts to see that the applicants, who were being brutally flogged in public view by the other respondents, are rescued. No efforts are made by him to stop the flogging. On the contrary, his presence in the chowk with other assailants shows that he has



accompanied with other respondents and has played an active role in bringing the applicants to chowk from the Police Station and they are tied to the pole and thereafter mercilessly beaten. Hence, there is a tacit consent or approval by the respondent No.3 in the illegal and humiliating act. Hence, no immunity can be granted to the respondent No.3 from framing the charge for contempt of Court.

12. Issue **Rule**.

13. We frame the charges as under:

You, the respondent No.2 - Mr.A.V.Parmar, the respondent No.3 - Mr.D.B.Kumavar, Respondent No.5 - Mr.Kanaksingh Laxman Singh, and the respondent No.13 - Mr.Raju Rameshbhai Dabhi have actively participated and have carried out the act of flogging the applicants in public by tying them to a pole on 04.10.2022 at around 14:00 hrs. at Undhela Village Masjid chowk.

Thus, you, the respondent No.2-Mr.A.V.Parmar, the respondent No.3-Mr.D.B.Kumavar, Respondent No.5-Mr.Kanaksingh Laxman Singh, and the respondent No.13-Mr.Raju Rameshbhai Dabhi by committing the aforesaid



acts, have violated the law enunciated by the Apex Court in the case of law enunciated by the Apex Court in the case of **D.K.Basu**(supra) and hence, why you should not be punished under the provisions of Section 2(b) read with Section 12 of the Act.

14. Though, we have extensively heard the learned advocates appearing for the respective respondents and they have also filed the affidavits denying and explaining the alleged act/conduct, but today, learned senior advocate Mr.Jani has submitted that he would like to file further affidavit(s) to respond to the charges.

15. As noticed hereinabove, the matter has been extensively heard on numerous occasions and affidavits are also filed by the respondents in support of the case. In the order dated 12.07.2023 passed by us, such contentions with regard to maintainability as well as facts were extensively recorded. Despite, the matter being extensively heard, we accede to the request of learned senior advocate Mr.Jani for granting time. However, it is clarified that no further time shall be granted and whatever the respondents want to say, they may state in their affidavit(s).



16. The matter is ordered to be listed on
11.10.2023 at 11:00 hrs.

Sd/-
(A. S. SUPEHIA, J)

Sd/-
(M. R. MENGDEY, J)

NVMEWADA/1