

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

R/SPECIAL CRIMINAL APPLICATION (DIRECTION) NO. 1136 of 2022
With
CRIMINAL MISC.APPLICATION (FOR JOINING PARTY) NO. 1 of 2024
In R/SPECIAL CRIMINAL APPLICATION NO. 1136 of 2022

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RAJESH HASTIMAL SHAH
Versus
STATE OF GUJARAT & ORS.

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Appearance:

MS VASVI N KAPADIA(6079) for the Applicant(s) No. 1
MR NISARG S SHAH(8886) for the Applicant(s) No. 1
MR TRUPESH KATHIRIYA, ADDL. PUBLIC PROSECUTOR for the
Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 19/09/2024

ORAL ORDER

[1.0] RULE returnable forthwith. Learned APP waives service of notice of Rule for and on behalf of respondent No.1 – State of Gujarat.

[2.0] By way of present petition under Articles 14, 20, 21 and 226 of the Constitution of India, the petitioner has sought the following reliefs:

“(A) YOUR LORDSHIPS be pleased to issue a writ of mandamus or an appropriate writ or order directing the respondents to conduct a detailed inquiry into the matter of police brutality; and conclude the same within time stipulated by this Hon’ble Court;

(B) YOUR LORDSHIPS be pleased to quash and set aside the communication dated 10.11.2021 issued by the respondent No.3, produced at Annexure-E; and also be



pleased to quash and set aside the letter dated 31.12.2021 issued by the respondent No.3, produced at Annexure-I;

(C) YOUR LORDSHIPS be pleased to direct the respondent Nos.2 and 3 to initiate department proceedings against the erring Police Inspector of Valsad City Police Station;

(E) YOUR LORDSHIPS be pleased to direct the respondent No.4 to initiate inquiry as stipulated under the Gujarat Police Act in consonance with section 32H and I; and further be pleased to quash the communication dated 29.11.2021 produced at page 68 (Annexure-H);”

[3.0] It is the case of the petitioner that the petitioner is the Vice President of Society for Prevention of Cruelty to Animals (SPCA), Valsad as well as the Trustee / Secretary of Ajit Seva Trust Panjrapole, Vapi and is actively fighting for the welfare of all living creatures and has rescued numerous animals from being illegal slaughtered. The petitioner has also been actively running campaigns for spreading awareness about the animal law and despite the fact of the petitioner being a senior citizen, he has never backed out from protecting the animals from cruelty.

[3.1] It is further the case that on 25.10.2021, the petitioner had intercepted three trucks which were carrying animals without any pass permit and in violation of the Transportation Rules read with Motor Vehicles Rules and had informed about the same to the police control room pursuant to which the police personnel had reached the place of incident and had informed the petitioner that he has been summoned by the Police Inspector of Valsad City Police Station and accordingly, the petitioner had gone to Valsad City Police Station, where he was called inside the cabin of Mr. Mori, Police Inspector, Valsad City Police Station



where the said Mr. Mori lashed out on the petitioner and abused him for intercepting the vehicles and was brutally beaten. Further, on 26.10.2021, the petitioner was traumatized because of assault and left eardrum of the petitioner was ruptured. Further, on 28.10.2021, it was diagnosed that there was a blood clot and perforation in the left eardrum and thereafter, on 01.11.2021, the petitioner addressed his complaint to respondent No.3 requesting to take appropriate disciplinary as well as penal action against the offender but the respondent No.3 simply transferred the complaint to the District Police Complaint Authority on 10.11.2021. Further, on 12.11.2021, the statement of the petitioner was recorded before the office of the Dy. Superintendent of Police, Valsad. As against the letter dated 10.11.2021, the petitioner had sent a communication dated 21.12.2021 to the respondent No.3 highlighting that since the complaint was preferred against the Police Inspector, same would fall within the jurisdictional ambit of Gujarat State Police Complaint Authority and not under the realm of District Police Complaint Authority. The petitioner vide communication dated 29.11.2021 was informed by the DySP, Valsad Division, Valsad that pursuant to the communications dated 25.10.2021 and 29.10.2021 and the statement of the petitioner, as the offence alleged by the petitioner against Mr. V.D. Mori, Police Inspector, Valsad City Police Station is under Section 323 of the Indian Penal Code, 1860, which is a non-cognizable offence, the petitioner ought to have sought the relief through Court. The said communication dated 29.11.2021 is produced with the petition at Annexure-H.

[4.0] Going through the grievance of the petitioner, *prima facie*,



it appears that the petitioner has raised grievance *qua* police brutality due to which he has sustained injury and also availed medical treatment and for the said untoward incident, he had initially approached the Gujarat State Police Complaints Authority which referred the said complaint to District Police Complaints Authority and without following the due procedure, the District Police Complaints Authority has informed the present petitioner to file appropriate proceedings. *Prima facie*, it appears that the said communication is not only against the settled principles of law but also in contravention of the provisions of sections 32H and 32J of the Gujarat Police Act, 1951 and without following the due procedure as prescribed under the Gujarat Police Act, 1951, communication (Annexure-H) is communicated by the DySP, Valsad Division, Valsad to the present petitioner. Therefore, this Court on 02.09.2024, had passed an order directing the learned APP to place on record the report stating as to what steps have been followed for compliance of the provision of section 32H of the Gujarat Police Act, 1951 and to deal with complaint made to Gujarat State Police Complaints Authority and then complaint referred to the concerned District Level Authority for redressal of the grievance against the police authority and in which manner and method the complaint made by the petitioner is being inquired into.

[4.1] Pursuant to the said order, learned APP has produced on record report dated 17.09.2024 of the Superintendent of Police, Valsad wherein it is stated that Notification dated 17.01.2023, District Police Complaint Authority having five members namely (1) Superintendent of Police of the District as Chair Person (Ex Officio); (2) Additional District Magistrate as Member (Ex Officio);



(3) Member of Legislative Assembly as Member; (4) Member of Legislative Assembly as Member and (5) S.D.P.O., Head Quarter Sub-Division as Member Secretary (Ex Officio) is constituted and alongwith the said Notification, Annexures wherein the details of number of complaints received and disposed of during the tenure are also produced but the said annexures are blank meaning thereby incomplete information has been supplied and thus, the order dated 02.09.2024 has not been complied with in its true letter and spirit and it is not reported as to whether the complaint filed by the petitioner was inquired into or not and thus, the report dated 17.09.2024 of the SP, Valsad is silent. However, the said report is taken on record.

[4.2] Learned APP has also produced report dated 18.09.2024 of the Superintendent of Police, Valsad stating that at the relevant point of time the complaint was inquired into by the DySP, Valsad Division and report was submitted but the said grievance of the petitioner shall be placed before the committee of District Police Complaint Authority and appropriate action shall be taken after following the provision of section 32H of the Gujarat Police Act, 1951. The said report is also taken on record.

[5.0] At this stage, it is worth to mention that by the Bombay Police (Gujarat Amendment) Bill, 2007, sections 32F, 32G and 32H have been inserted in the Gujarat Police Act, 1951, which read as under:

*“32F. Establishment of State Police Complaints Authority.-
(1) The State Government shall constitute, by an order, the State Police Complaints Authority consisting of the following members, namely:-*



- (a) *a retired Judge of the High Court or a retired officer not below the rank of Principal Secretary to the Government of Gujarat who shall be the Chairperson;*
- (b) *the Principal Secretary to the Government of Gujarat, Home Department, ex-officio;*
- (c) *an officer not below the rank of the Additional Director General of Police, nominated by the State Government, ex-officio, who shall be the Member secretary; and*
- (d) *a person of eminence appointed by the state Government.*

(2) The terms and conditions of the members of the State Police Complaints Authority, other than ex-officio, shall be such, as may be prescribed.

32G. Powers and functions of State Police Complaints Authority.- The State Police Complaints Authority shall exercise the following powers and perform following functions, namely:-

(1) to look into the complaints against police officers of the rank of Deputy Superintendent of Police and above, in respect of serious misconduct, dereliction of duty, misuse of powers, or any other matter specified by the Government, not covered by the Vigilance Commission, National Human Rights Commission, State Human Rights Commission, Commission for Minorities, Commission for Scheduled Castes and Scheduled Tribes, Commission for Women and Commission for Backward Class Communities, or any other Commissions as may be appointed from time to time either by the Central Government or by the State Government;

(2) to require any person to furnish information on such points or matters as, in the opinion of the Authority, may be useful for, or relevant to, the subject matter of the inquiry, and any person so required shall be deemed to be legally bound to furnish such information within the meaning of sections 176 and 177 of the Indian Penal Code,



1860;

(3) to enforce attendance of any person and take evidence on oath in the manner of a civil court;

(4) to make appropriate recommendations to the State Government on any case enquired into by it, wherever required.

32H. Powers and functions of District Police Complaints Authority.- (1) The State Government shall, by an order, constitute the District Police Complaints Authority for each District consisting of the following members, namely:-

- (a) The Superintendent of Police of the District, ex-officio, who shall be the Chairperson,*
- (b) The Additional District Magistrate of the District, to be appointed by the State Government, ex-officio.*
- (c) Two members of the Gujarat Legislative Assembly elected from the concerning District, to be appointed by the State Government.*
- (d) The Deputy Superintendent of Police, ex-officio, who shall be the Member-Secretary.*

(2) The terms and condition of the members of the District Police Complaints Authority other than ex-officio, shall be such as may be prescribed.

(3) (a) The District Police Complaints Authority shall meet at least once in every quarter and assess the record of at least one-fourth of all Police Stations within the District with respect to the following matters and also prepare a rating in the prescribed manner:-

- (i) prompt registration of First Information Report;*
- (ii) custodial violence;*
- (iii) extortion of money from complainants and the victims;*



- (iv) *drunken behavior; and*
- (v) *misbehavior with the pubic.*

(b) The report and the rating shall be sent to the concerned authorities for taking appropriate action."

The said amendment was carried out pursuant to the direction given by the Hon'ble Supreme Court in the case of **Prakash Singh & Ors. vs. Union of India** reported in **(2006) 8 SCC 1**. The aim and object of the said amendment was effective administration of law and order and for that police be equipped legally to carry out the offence and fulfill its responsibility to ensure efficient, transparent and proactive action in assuring the well-being of the citizen at large in terms of policy, guidelines, performance parameters, responsiveness to public and under the grievance redressal mechanism against the act of public is made.

[5.1] Considering the aforesaid fact, as the complaint was received by the District Police Complaint Authority, as per section 32H(3) of the Gujarat Police Act, the complaint of the petitioner was required to be investigated by the committee. Herein, it is not investigated by the committee but one of the member i.e. DySP on his own made the correspondence and given a reply and it appears that the said reply does not depict that the complaint is properly investigated. Even after the investigation of the said complaint in terms of section 32H(B), the report is not sent to the concerned authority for taking appropriate action. The authority has ensured through the learned APP that District Police Complaint Authority will look into the matter and complaint be once again placed for



adjudication before the District Police Complaint Authority established under Section 32H of the Gujarat Police Act.

[6.0] At this stage, it would not be out of place to take note of the fact that though the Hon'ble Apex Court has given directions in the case of ***Prakash Singh (Supra)*** with regard to police reforms and even otherwise there is a provision of section 147 of the Gujarat Police Act, 1951, misuse of police powers are widespread and day in and day out number of complaints being received against the behavior of police personnel. In this regard, the Hon'ble Supreme Court has time and again raised the concerned and issued directions in the case of (1) **Shakila Abdul Gafar Khan vs. Vasant Raghunath Dhoble** reported in **(2003) 7 SCC 749**; (2) **Monica Kumar & Anr. vs. State of Uttar Pradesh and Others** reported in **(2017) 16 SCC 169 (Page 185)**; and (3) **Munshi Singh Gautam vs. State of Madhya Pradesh** reported in **(2005) 9 SCC 631** which are very relevant and important for the citizen of country as well as administration of criminal justice also. But, even after passage of long time, the said directions have fallen on deaf ears and situation does not seem to be showing any noticeable change.

[7.0] The respondent No.1 authority is directed to ensure about effective and proper functioning of the (i) Gujarat State Police Complaints Authority and (ii) District Police Complaint Authority in its true and perspective manner.

[7.1] Respondent is also directed to look into the grievance raised by the petitioner afresh and take appropriate action in light of the provision of Sections 32H and 32I of the Gujarat



Police Act, 1951 and submit the report to the Gujarat State Police Complaints Authority and inform the petitioner about the outcome of his complaint / grievance dated 01.11.2021 at the earliest and preferably within a period of one month from the date of receipt of the present order.

[7.2] It is also kept open for the petitioner, if he wants, to file any independent proceeding or criminal proceeding *qua* alleged act of police, which shall be decided independently on its own merit by the concerned authority.

[8.0] In view of the above discussion, present petition is allowed in part. Impugned communication dated 29.11.2021 produced at Annexure-H is hereby quashed and set aside. Present petition is disposed of accordingly.

Let the copy of this order be communicated to the Secretary, Home Department, Government of Gujarat for compliance of the directions issued in paragraph Nos.[6.0] and [7.0] of this order.

[9.0] In view of disposal of Special Criminal Application No.1136/2022, Criminal Misc. Application No.1/2024 in Special Criminal Application No.1136/2022 also stands disposed of.

(HASMUKH D. SUTHAR, J.)

Ajay