

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1657 OF 2021
(Arising out of SLP (CrI.) No. 11123 of 2019)

SIDDHARTH MUKESH BHANDARI

Appellant(s)

VERSUS

THE STATE OF GUJARAT & ANR.

Respondent(s)

with

CRIMINAL APPEAL NO. 1660 OF 2021
(Arising out of SLP (CrI.) No. 11015 of 2019)
with

CRIMINAL APPEAL NO. 1659 OF 2021
(Arising out of SLP (CrI.) No. 11035 of 2019)
with

CRIMINAL APPEAL NO. 1658 OF 2021
(Arising out of SLP (CrI.) No. 11057 of 2019)

O R D E R

Leave granted.

1. The common question of law and facts arises in this group of appeals were disposed of by this common judgment and order.
2. Feeling aggrieved and dissatisfied with the impugned interim order dated 10.10.2019 passed by the High Court of Gujarat at Ahmedabad passed in Special Criminal Application Nos. 9110/2019 to 9112/2019 by which in the petitions under Article 226 of the Constitution of India praying for quashing

of the FIRs/Criminal proceedings, the High Court on very first day of hearing of the aforesaid Special Criminal Applications, has passed ex parte interim orders to the effect that there shall not be any coercive steps taken against the private respondents-herein - original petitioners, the original contemnors have preferred the present Appeals.

3. Having heard the learned counsel for the respective parties and the manner in which the High Court has passed the impugned ex parte interim orders of no coercive steps be taken against the original accused cannot be approved and it is unsustainable.

4. The issue whether such an interim order of no coercive steps during the proceedings under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India could have been passed or not is now not *res integra* in view of the recent decision of this Court in M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and Ors., 2021 (5) Scale 610.

5. After detailed analysis of law on the point this Court has concluded as under:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) It is only in cases where no cognizable offence or offence of any kind is

disclosed in the first information report that the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations

in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate 60 which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the 61 Constitution of India. However,

an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.

xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or

misapplied."

6. In view of the above and applying the law laid down by this Court in *Neeharika Infrastructure Pvt. Ltd. (supra)*, the impugned interim orders passed by the High Court in the order dated 10.10.2019 in respective Special Criminal Application Nos. 9910/2019 to 9112/2019 is/are hereby quashed and set aside.

6. All these Appeals are allowed accordingly.

..... J.
(M.R. SHAH)

.....J.
(B.V. NAGARATHNA)

New Delhi;
December 17, 2021.

ITEM NO.24

Court 13 (Video Conferencing)

SECTION II-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Special Leave Petition (Crl.) No. 11123/2019

SIDDHARTH MUKESH BHANDARI

Appellant(s)

VERSUS

THE STATE OF GUJARAT & ANR.

Respondent(s)

IA No. 186534/2019 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT

IA No. 186533/2019 - EXEMPTION FROM FILING O.T.

IA No. 193373/2019 - MODIFICATION

WITH

Special Leave Petition (Crl.) No. 11015/2019 (II-B)

FOR EXEMPTION FROM FILING O.T. ON IA 184511/2019

FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA 184513/2019

FOR MODIFICATION ON IA 193376/2019

Special Leave Petition (Crl.) No. 11035/2021 (II-B)

FOR EXEMPTION FROM FILING O.T. ON IA 184774/2019

FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA 184776/2019

FOR MODIFICATION ON IA 193379/2019

Special Leave Petition (Crl.) No. 11057/2019 (II-B)

FOR EXEMPTION FROM FILING O.T. ON IA 185194/2019

FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA 185197/2019

Date : 17-12-2021 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE M.R. SHAH

HON'BLE MRS. JUSTICE B.V. NAGARATHNA

For Appellant(s)

Mr. Rajesh Goswami, Adv.

Mr. Harshit Tolia, Adv.

Mr. P. S. Sudheer, AOR

Ms. Anne Mathew, Adv.

Mr. Bharat Sood, Adv.

Ms. Shruti Jose, Adv.

For Respondent(s)

Mr. Satvik Varma, Sr. Adv.

Mr. Mahesh Agarwal, Adv.

Mr. Ankur Saigal, Adv.

Mr. Anirudh Bhatia, Adv.

Mr. Rohan Pratap Talwar, Adv.

Ms. Ayushi Amod, Adv.
Mr. E. C. Agrawala, AOR

Ms. Aastha Mehta, Adv.
Ms. Deepanwita Priyanka, AOR
Ms. Prerana Mohapatra, Adv.

Ms. Anushree Prashit Kapadia, AOR
Ms. Priyanka Rathi, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The Appeals are allowed in terms of the signed order.

Pending applications stand disposed of.

(R. NATARAJAN)
ASTT. REGISTRAR-cum-PS

(NISHA TRIPATHI)
BRANCH OFFICER

(Signed order is placed on the file)