HIGH COURT OF GUJARAT

N T DESAI
Versus
STATE OF GUJARAT

Date of Decision: 10 December 1996

Citation: 1996 LawSuit(Guj) 583

Hon'ble Judges: K J Vaidya

Eq. Citations: **1997 2 GLR 942**, 1997 CrLR 227, 1997 2 GCD 514

Case Type: Misc Criminal Application

Case No: 6046 of 1996

Subject: Criminal

Acts Referred:
Code Of Criminal Procedure, 1973 Sec 438, Sec 482, Sec 439
Scheduled Castes And Scheduled Tribes (Prevention Of Atrocities) Act, 1989 Sec 3(x), Sec 18

Final Decision: Application allowed

Advocates: R C Jani, A J Desai

Cases Cited in (+): **8**
Cases Referred in (+): **3**

K. J. VAIDYA, J.

[1] Rule. Mr. A. J. Desai, learned A.P.P. appearing for the Respondent-State waives service of the Rule. Heard learned Advocates appearing for the respective parties. Having regard to the facts and circumstances of the case, this matter is heard and decided today.

[2] The facts-situation depicted in this case if true, prima facie brings on surface how unfortunate indeed even quite well-intended and much more needed ideal social welfare piece of legislation like the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 can be quite conveniently and unscrupulously abused to wreck the personal vengeance of an individual against another individual and that too on the holy

anvil of Court with a weapon of the abuse of judicial process and thereby not only humiliating and pressurising the innocent citizen, but incidentally and ironically enough also placing the crusading champions and protagonists of the down-trodden and crushed members of S.C. & S.T.s in most precarious, embarrassing and demoralising situation, who indeed and undoubtedly still needs much more further legal and moral support in their just and enervating struggle for existence and fight and revolution against some undesirable lingering recesses of incorrigible, inhuman, blood-thirsty orthodox members of the Society who are downright slurs on humanity !! It appears that if such wild, false, frivolous, vexatious complaints as alleged by the petitioner are lightly entertained and encouraged on mere asking, then instead of bringing about an end of class prejudice and the resultant class-war and so-called Savarnas and the members of S.C. & S.T. class nearer embrace each other would rather further wedge and deepen permanent rift between the two tearing them apart pole asunder adding acid heart-burns and head-aches to peaceful social order !! In fact, these days as often heard in the Court-room during the course of arguments (no reason to dismiss the same airily !!), the whisper by some innocent has started gathering momentum that the abuse of the Atrocities Act in some of the cases by some scheming, unscrupulous persons itself has started turning into the act of gross atrocity against some innocent individuals !! The irresistible motivating force perhaps promoting some black-sheep in a given case being the effortless handsome ex gratia compensation awarded by the State Government to the S.C. & S.T. class without shedding a drop of sweat even !! If this allegation has any semblance of substance in it, it is indeed too grave a situation for all concerned to be countenanced lightly because what indeed we do not know, it may boom-rang the very laudable object for which the Atrocity Act ultimately came to be enacted !! It is here that all responsible citizens from all communities, including the honest, sincere and wise persons belonging to S.C. & S.T. communities and the Court also to quite great extent needs to be on the constant guard against such unfortunate happenings, giving bad name and thereby serious set back and challenge to one of the most important, fundamental, laudable and much needed legislations like Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1985. To this rather unescapable observations necessitated in facts and circumstances of the word of caution is also needed to be added ! Accordingly, it would be simply quite unwise for the Court to straightway assume that the complaint in each and every case under the Atrocity Act is false, frivolous and vexatious, and therefore, doubtful because of some such unfortunate experiences in some cases. Bearing this in mind, in the overall and ultimate interest of justice, each and every case under the Atrocity Act is required to be closely examined with much needed honesty of purpose, guts and courage of conviction, and decide the same one way or the other; as warranted by the facts of the case.

[3] At the very outset, it needs to be clarified that so far as the ultimate merit and result of the case at hand is concerned, the observations that are just prefaced above have nothing to do with the same as they are general, first hand and prima facie unavoidable inferences, looking to many a time false cases filed against some innocents under the Atrocity Act.

[4] To State few relevant facts - Dr. N. T. Desai, petitioner herein, is a Resident Doctor & Superintendent of Referral Hospital and Community Health Centre at Vijapur, while the respondent Vaghela Natwarbhai Somabhai is a full-time Sweeper working under him at the said Hospital. On 5th December, 1996 at 18-15 hours, Natwarbhai Somabhai filed a complaint before Vijapur Police Station against the petitioner Dr. N. T. Desai in substance alleging that on 5-12-1996 at 11-00 a.m. when he went to the office for taking his salary, he was informed by senior clerk and Shri B. M. Patel that Superintendent Dr. N. T. Desai had directed them not to pay the salary for the month of November, 1996, and accordingly, the bill in said regard was not to be prepared. As a result, at 11-15 hours, Natwarbhai went to the office of Superintendent of the Hospital and inquired about his salary where also he was informed that his salary bill is not prepared. It is further the case of the complainant that he has served for the whole month, out of which for 3 days only, he was on leave because of the death of his elder brother and regarding that, he had already informed Desai Saheb on telephone also. Thereafter, it is further alleged in the complaint that Dr. N. T. Desai addressed him as "Sala Bhangiya Dhedha Faraz Bajawel Nathi ane Shano pagaar mange chhae " to translate into English, i.e., "Sala Bhangia Dheda, when you have not performed your duty, on what basis you were demanding the salary ", and gave further filthy abuses and threatened him to ruin him. Not only that but he was further threatened that if he took the name of salary, he will not spare him taking his life even. Further, according to the complainant, at the time of this incident, Dr. B. M. Patel was sitting in his chair and it was in his presence that he was given such threats by accused. On the basis of these allegations, Natwarbhai Somabhai filed a complaint against the petitioner for the alleged offences punishable under Sec. 3(1)(x) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Secs. 504, 506(2) of Indian Penal Code before the police station officer, Vijapur for taking action against him. It is under these jittery circumstances that out of wit and unnerved, petitioner has rushed to this Court alleging that the complaint in question against him by the complainant being patently malicious, false, frivolous and vexatious, filed only with a view to victimise and harass him and tarnish his image thereby, inter alia praying for protection and reliefs as stated hereunder :

(i) to quash and set aside the F.I.R. bearing C.R. No. II. 332 of 1996 registered at Vijapur Police Station, Vijapur;

(ii) to direct the Police Officer not to arrest him in connection with the aforesaid complaint;

(iii) petitioner be treated as taken in judicial custody and the Special Judge may be directed to hear the application that may be submitted by the petitioner for regular bail.

[5] Mr. R. C. Jani, the learned Advocate appearing for the petitioner vehemently submitted that this complaint against the petitioner is mala fide and actuated by malicious intention to demoralise the petitioner under whom complainant Natwarbhai Somabhai Vaghela was serving in the hospital, with an avowed object to counterblast and deter the departmental action/proceedings against complainant pending or that may be taken against him. Making good this submission, Mr. Jani has enumerated a catalogue of several incidents leading to the filing of the complaint from which according to Mr. Jani it could be reasonably inferred that this complaint is false and nothing else but thereby an attempt to demoralise the petitioner from discharging his duty and taking steps against him, abusing the process of law. The circumstances catalogued and highlighted by Mr. Jani read as under :-

Letter Dated Subject of Letter

5-2-1996 Without permission, he should not leave headquarter, otherwise action will be taken against him.

15-3-1996 Showing lethargy towards regular work of cleaning dispensary and laboratory and not staying at headquarter.

15-3-1996 To perform duties of keeping laboratory and lavatory clean.

4-4-1996 Reminder as the complainant in not taking possession of quarter though three months are passed.

4-6-1996 Explanation given by the complainant to the effect that his wife is serving at Mansa and his son is not keeping good health and therefore, he is not in a position to take over possession. A duty of performing post-mortem is transferred to somebody by way of this letter, which is not permissible to the complainant.

17-6-1996 Reminder regarding keeping laboratory and lavatory and compound clean.

19-6-1996 Disallowing the reply of the complainant.

30-7-1996 Instructions from Government to take necessary action against the complainant by petitioner.

2-9-1996 Reminder showing lethargy towards duty for which earlier also complaint was made in writing.

22-10-1996 Lethargy towards duty and not residing at headquarter.

7-11-1996 Instructions from Government to take necessary action and inform the Government.

19-11-1996 To convey the same to the complainant and ask for explanation.

5-12-1996 Complaint under Atrocities Act.

[6] In support of aforesaid submissions, Mr. Jani has relied upon two decisions of this Court rendered in the case of Pankaj Suthar v. State of Gujarat, reported in 1992(1) GLR 405; and Jasubhai Majdan Gadhvi v. State of Gujarat, reported in 1992(2) GLH 492. Mr. Jani submitted that the case of petitioner clearly falls within the ambit of aforesaid two leading decisions and in that view of the matter, atleast the petitioner who is very much present before the Court and ready and willing to surrender to the custody of the Court be treated as surrendered and taken to the custody of the Court and if nothing else, at least his prayer for regular bail may be granted.

[7] Now, the aforesaid contentions of Mr. Jani with equal vehemence were opposed by Mr. A. J. Desai, the learned A.P.P. appearing for the respondent-State. According to the learned A.P.P., in the first instance, what the petitioner at this stage, indirectly and ultimately, prays for is an anticipatory bail which in view of the specific provisions of the said Act, viz., Sec. 18, can never be granted. In support of this contention, the learned A.P.P. has relied upon the decision of Supreme Court rendered in the case of State ofM.P. & Anr. v. Ramkishan Balothia, reported in JT 1995(2) SC 310. The learned A.P.P. further submitted that if so-called defence of the accused is taken into consideration at its face value and that too at this stage on mere asking then anything and everything could be counter-urged in defence negativing and stultifying the deterrent efficacy of the special Act enacted in the interest of Scheduled Castes & Scheduled Tribes. The learned A.P.P. further submitted that not only this Court should refuse anticipatory bail to the petitioner in view of the clear bar to the same in Sec. 18 of the Act but in case the petitioner seeks bail by surrendering to the custody of this Court, then even the same should not be granted and he be directed to move the Special Court meant for the purpose in ordinary course !! The learned A.P.P. further submitted that such an exercise of voluntarily surrendering to this Court custody at such an initial stage of the prosecution short-circuiting and jumping the ordinary

course of moving the Special Court should not be permitted to accused. On the basis of these submissions, learned A.P.P. finally urged that this petition deserves to be summarily dismissed, and be dismissed accordingly.

[8] To deal first with the preliminary objection raised by the learned A.P.P. Mr. Desai, it may be stated that the Supreme Court's decision rendered in the case of State of M. P. & Anr. v. Ramkishan Balothia (supra) stands on altogether quite different footing where the virus of Sec. 18 of the Act came to be decided. The Apex Court has ultimately held that Sec. 18 of the Act was not ultra vires. This Court is indeed in respectful agreement with the aforesaid decision of the Supreme Court. In fact, the point raised before this Court was not at all before the Supreme Court. Under the circumstances, the subtle point which is required to be closely examined and appreciated by every Court while called upon to do criminal justice at bail stage, in particular, directly affecting the liberty of a citizens to be as alert, careful and circumspect as a surgeon performing an operation on patient is required to be !! Neither any more dose of anesthesia than actually needed nor even any extra drop of blood be shed near endangering the life of the patient while performing the operation. This golden scale, extraordinary care and circumspection is specifically required to be taken where it is not misled to be blindened, confused and emotionally benumbed in the name of some Social Welfare Law whereby the most precious right of the citizen, viz., LIBERTY is sought to be clouded, eroded and taken away by deceiving the Court on ex-facie false allegations, just with a view to quench the thirst of complainant of wrecking personal vengeance and settle the score thereby ! In case of Pankaj Suthar v. State of Gujarat (supra), this Court has expressed at length the importance of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989. Not only that but it is also the firm view of this Court that once the accused is found to be guilty of the alleged offences under Atrocity Act, he cannot be spared taking the lenient view of the matter on mere asking without any justifiable circumstances available on the record. This Atrocity Act was and is indeed a much needed legislation and the Parliament has rightly come out with the same for the protection of weaker sections of the society. Quite hard and harsh it may appear to the accused the provision of not granting the anticipatory bail to him by enacting Sec. 18 of the Act where the right of anticipatory bail under Sec. 438 of the Code is taken away, but then such a provision was absolutely necessary, and therefore, must to deter some incorrigible, inhuman, orthodox, blood thirsty enemies (of course gradually diminishing) of Harijans and other down-trodden S.C. & S.T. people. Accordingly, this Court is very clear that if indeed its conscious was satisfied that having regard to the allegations made in the complaint examined in light of improbable defence version, no lighter view was possible, such a petition deserved to be and accordingly would have been thrown back as dismissed. But then having closely examined the complaint more particularly in the context and light of the backdrop of

the peculiar facts situation highlighted by the petitioner leading ultimately to filing of the complaint, this Court prime facie at the very outset is at some doubt about the complainant's story and yet if it readily, mechanically like a gullible child accepts the allegations made in the complaint at its face value, it would be surely blundering and wandering away from the path of bail-justice, making itself readily available in the hands of the scheming complainant who on mere asking will get arrested accused on some false allegations of having committed non-bailable offence, under the Atrocity Act, meaning thereby the Court rendering itself quite deaf, dumb and blind mortgaging its commonsense, ordinary prudence with no perception for justice, denying the rightful protection to the accused becoming ready pawn pliable in the hands of sometime scheming, unscrupulous complainants !!! This sort of a surrender to prima facie doubtful allegation in the complaint is not at all a judicial approach, if not unjudicial !! At the cost of repetition, I make it clear that these observations are only preliminary, at this stage only in peculiar background of the case highlighted by petitioner-accused and for that purpose may be even in future be so highlighted by the accused in some other cases to the satisfaction of the Court ! The reason is having regard to the basic cardinal tenets of the criminal jurisprudence more particularly in view of the peculiar circumstances highlighted by the accused which allegedly actuated complainant to victimise him, in case if ultimately at the end of trial what the accused has submitted in defence is accepted as probable or true and as a result, the accused is given a clean bill, holding that the complaint was nothing else but false, concoction by way of spite to wreck the personal vengeance then in that case what indeed would be the remedy and redresses in the hands of the petitioner, who in the instant case is Doctor by profession and for that purpose in other cases an innocent citizen ? He stands not only stigmatised by filing of a false complaint against him but he shall stand further subjected to trial !! Not only that but before that even subjected to arrest before the public eye and taken to Special Court where only he could pray for bail ! Thus, subjected to all sort of agonies, pains and sufferings lowering his image and esteem in the eye of public because the Court when approached adopted the helpless attitude ?? Under such bewildering circumstances, what indeed would be the face of the Court and the fate of the Administration of Justice denying bail to some victimised innocent accused at crucial stage when he surrenders to the Court custody for the purpose ??!! Should the Court proclaiming doing justice stand befooled at the hands of some mischievous complainant with head-down in shame !! Supposing for giving false evidence before the Court, the complainant is ordered to be prosecuted, but then will such prosecutions of complainant bring back the damage already done to an innocent !! Bearing in mind this most embarrassing and excruciating situation created by the complainant when, this Court as a Constitutional functionary is duty bound to zealously protect the liberty of citizen, should it be helplessly watching and passively surrendering itself to sometimes prima facie ex-facie malicious complaint denying

simple bail to the accused ? In this regard, perhaps, it may be idly said that accused can be given compensation for the malicious prosecution and ultimate refusal of bail or anticipatory bail !! True, but then in that case what compensation can any Court would be in a position to give when the complainant is a person who is poor enough unable to pay a single pie ??!! Not only that but in case complainant is rich and able to pay compensation then even can any monetary compensation ever adequately compensate the wrong accused suffered at the hands of the malicious complainant ? It is here that the conscience of this Court stands pricked and terribly perturbed and indeed will have a sleepless night if what ought we do not know where the petitioner, in the facts and circumstances of the case be quite innocent and accordingly a needy consumer of bail justice and yet is unnecessarily subjected to arrest taken to the police custody and then before Court because of denial of bail to him at this stage !! This Court at the cost of repetition once again would like to make it clear that these observations are tentative. These are not certainly made to influence the trial Court while trying the case. It is open to the trial Court to draw any reasonable inference either in favour of the complainant or accused after the prosecution witnesses are examined. It is also made clear that in facts of this case, particularly wherein one witness is named as "person present", this Court is certainly not inclined to be in hot haste to quash the proceedings as prayed for by the petitioner and accordingly the complainant would be at liberty to prove his case but had indeed the complainant not named witness in the complaint then this Court in peculiar backdrop of the case might have quashed the proceedings against the petitioner. Once on reading the complaint, if it clearly appears to the Court that there is indeed not even the bleakest of possibility of securing conviction and the accused in all probabilities has been falsely framed up and made to victimise, then in that case it is the duty of the Court to save protect accused from being unnecessarily humiliated and subjected to the agonies and inconvenience of trial costing the precious public time of the Court delaying trial of other cases where hundreds of accused are languishing in jail as under-trial prisoners clamouring for speedy trial 11 This extraordinary power of quashing the proceedings enshrined in Sec. 482 of the Code is undoubtedly required to be sparingly used but when ends of justice so imminently warrants that extraordinary inherent power of High Court becomes and accordingly enjoins extraordinary duty and obligation upon the Court to exercise the same without any feeling of hesitation. In fact, in such cases, every Court much more so as the Constitutional functionary like the High Court has to strike a reasonable balance between the rights of the accused on the one hand and the rights of the prosecution on the other. Rights of the complainant in cases under the Act are required to be protected and secured by seeing that the Court does not lightly interfere and thereby come in its way of regular trial proceedings, as far as possible, and at the same time, right of the accused is required to be protected by seeing that if just and proper case is made out creating reasonable doubt about the complainant story and

allegations, he should be released on bail particularly when he surrenders to the custody of the Court. Thus, examining everything, i.e., to say on the one hand the need and importance of the object underlying Atrocities Act, and on the other hand, in a given case, where there is a possibility of abuse of the said Act getting the accused schemingly arrested on apparently false, vexatious allegation of having committed a non-bailable offence, it is required to be weighed in a golden scale and then taking a tentative comparative view when the conscience of the Court feels satisfied that the liberty of the accused before it deserves to be given its due and the highest importance, it shall see to it that it stands by.

> This takes us now to yet another important contention of learned A.P.P. that the petitioner even if he surrenders to the custody of this Court, the same should not be accepted and instead be asked to go before the Special Court for the needful reliefs as provided ordinarily under the law. This contention of the learned A.P.P. cannot be accepted, as it is quite unfair, harsh and unjust. If this Court has jurisdiction to take accused in its custody, why should he be denied bail ?? Merely because he is an accused of offence/s under the Atrocity Act ?? Does such pre-trial prejudice against the accused enhance the image of the Court doing justice ?? If on the allegation of having committed a non-bailable offence under the Atrocities Act accused instead of approaching High Court surrenders to the custody of the Special Court, depending upon the facts and circumstances of the case, even the Special Court ought too and must accept the custody of the accused and release him on bail, why indeed the High Court which is undoubtedly superior Court cannot take the accused in its custody and order bail !! This has already been discussed and done by this Court in the case of Jashubhai Majdan Gadhvi v. State of Gujarat (supra) and accordingly, there is indeed no reason for this Court to disagree with the said decision.

[9] Dr. N. T. Desai is very much present before this Court and has voluntarily surrendered himself to the custody of this Court praying for regular bail. He is ordered to be taken in this Court custody. In this view of the matter, having regard to the peculiar facts and circumstances of the case as elaborately highlighted and discussed above, this Court in the first instance is required to do justice by seeing that the petitioner is not mechanically, unnecessarily victimised at this stage on the basis of apparently some doubtful, reckless allegations made in the complaint against him and at the same time, in the second instance, also protecting the vital interest of the complainant by not quashing the complaint, the same being under the Atrocity Act, so as to test out his ultimate credibility on the anvil of the regular trial proceedings before the learned Magistrate.

[10] In the result, this application is allowed to the extent that the petitioner is ordered to be released on regular bail in sum of Rs. 5,000/- (Rupees five thousand only) and one surety of like amount to be issued at the Special Court at Mehsana, with a further condition that the petitioner shall not leave Mehsana District without the previous permission of Vijapur Police Station. Rule is made absolute. Direct service is permitted.

Application allowed.