



**IN THE COURT OF 7th JUDICIAL MAGISTRATE FIRST CLASS, AT:
BHARUCH.**

CRIMINAL CASE NO. 301/2024

In the matter of :-

GOVERNMENT OF GUJARAT

COMPLAINANT

V/s

SHER MAHMAD & 4 OTHERS

ACCUSED

**APPLICATION FOR FURTHER INVESTIGATION UNDER OFFENCES
PERTAINING TO INDIAN PENAL CODE 1860 SECTION 323, 324,
325, 326, 504, 506(2), 114, 110, 120B & GUJARAT POLICE ACT
SECTION 135.**

APPEARANCE :-

Learned advocate Mr. K K Prajapati for the private complainant-applicant.

Learned advocate Mr. A I Patel for all the accused

ORDER BELOW EXHIBIT 10

1. The applicant-informant i.e. complainant Mr. Saiyed Sulemaan Patel has preferred the present application under section 173(8) of the code of criminal procedure, 1973 seeking prayer to order further investigation to the experienced and senior police official in connection to the criminal case number 301/2024 in pursuance to the FIR number 11199038230871 of 2023 dated 10/10/2023 registered with Nabipur police station, Bharuch for the alleged offences punishable under section 323, 324, 325, 326, 504, 506(2) & 114 of Indian penal Code, 1860 and section 135 of Gujarat Police Act. Per contra the learned advocate for the accused has opposed the present application and filed written reply at exhibit 14 to dismiss the present application of the applicant-complainant.

Brief facts of the FIR

2. The offence is charge sheeted by the police officials against total 5 accused persons under section 323, 324, 325, 326, 504, 506(2), 114, 110, 120B of Indian penal Code, 1860 and section 135 of Gujarat Police Act. Further, looking to the FIR, chargesheet, the allegations are to the effect that the applicant was beaten by the accused persons on dated 10/10/2023 at the janor Chokdi at about 12:30 noon because of such incident he received the serious injury over the right leg, as well as left leg and on the other parts of the body.
3. It is the say of the applicant that he has raised voice with regard to encroachment over the government and gauchar land, village bambusar, people who have encroached the government gauchar land have threatened the applicant for the dire consequences.

Brief facts of the present application

4. At village Babusar district Bharuch government land, gauchar unauthorised encroachment took place and the applicant-complainant has made applications to the government officials for taking lawful steps, the accused farid yusuf vali and along with him other accused had intimidated and have done criminal conspiracy along with accused number 1 to

accused number 4 and on dated 10/10/2023 life threatening attack also criminal intimidation. The applicant has suffered 13 stiches and leg fractured and other bodily injuries are caused.

5. The main accused farid yusuf vali patel since beginning have caused influence to the police investigating officer.
6. The complainant-applicant has filed the present application at Exhibit 10 and supporting documents at exhibit 11 mainly on the ground that, the police has filed an incomplete chargesheet by not taking some important evidence to be a part of chargesheet. Further, by doing so the police has not shown some persons as accused. Further, the further investigation is sought on the ground that the police has failed to collect CCTV footage and thereby filed an incomplete chargesheet without collecting many other evidences so has to save some of the accused persons.
7. The investigating officer have not conducted a Test identification report and the investigating official have acted in collusion with the accused persons.
8. The investigating officer have not collected the CCTV footage which is the key evidence.

9. It is the say of the application that the complainant had made representations and ventilated the grievances with regard to the investigation to the D.S.P Bharuch.

Arguments canvassed by learned advocate on behalf of applicant-complainant:

10. The learned advocate for the applicant-complainant has filed Written arguments at exhibit 18 on dated 28th June 2024. Further the learned advocate has relied upon the authorities/citations mentioned at exhibit 19.

Reply filed by the investigating officer

11. No reply is filed by the investigating officer before this court despite service and appearance.

Arguments conducted by learned advocate for the accused:

12. The learned advocate for the accused has argued that the present application is filed with the sole intention and malafide motive to keep the accused outside the limits of the Nabipur.
13. The Learned advocate for the accused vehemently opposed the application for further investigation on the ground that, the present application is not maintainable and the matter and issue of further investigation is already

pending and is sub-judice with the Hon'ble High Court and thus the present petition is not maintainable.

14. Further, the another submission made by the Learned Advocate for the Accused is that the intention of the applicant complainant is to merely delay the proceedings and further to keep lingering the matter. Thereafter no further submissions are made before this court.

REASONS & FINDINGS

15. Before discussing on each and every aspect this court deems it fit to reproduce the series of events which is as follows:

16. **Series of events as per the documents annexed is as follows:**

<u>What has happened which are relevant to this case</u>	<u>On which date it has happened</u>
Date of occurrence of offence	On dated 10/10/2023 time 12:30
Date mentioned on the FIR	On dated 10/10/2023 time 20:45

<p>Date of making representations to the D.S.P</p> <p>At Exhibit 11 total 4 representations are made by the applicant</p>	<p>On dated 19/10/2023</p> <p>On dated 27/10/2023</p> <p>On dated 02/11/2023</p> <p>On dated 16/12/2023</p>
<p>Charge-sheet came to be filed on dated</p>	<p>On dated 10/01/2024</p>
<p>Since the representations were not fruitful Applicant has preferred Special Criminal application number 16588/2023 before the Hon'ble High Court of Gujarat under article 226, article 227 seeking a writ of mandamus to direct the D.S.P. Bharuch to investigate the present case in the interest of justice.</p>	<p>Registered On dated 20/12/2023</p>

Order passed by the hon'ble High court of Gujarat calling for progress report of the investigation	Order passed on dated 02/01/2024.
Hon'ble 3 rd additional sessions judge at Bharuch vide criminal misc application no. 260/2024 have given directions to the trial court to frame the charge and record the deposition of the complainant as early as possible preferably within two months from receipt of this order.	Directions given on dated 03/04/2024
Present application seeking directions for further investigation	Filed on dated 30/04/2024
During the course of hearing arguments on dated 28/06/2024 on present application at exhibit 10 this court was made aware that the above directions have	

been passed by hon'ble sessions judge and hence this court deemed it fit to seek extension of time to comply with the above directions.

17. Having heard the arguments advanced by the learned advocates and after perusal of the documents on record. Considering the submissions and arguments advanced before this court. This court is of the opinion that in the interest of justice and in the present facts and circumstances of this case present application for further investigation of offence qua this criminal case deserves to be rejected. Following are the findings and reasons for the same.
18. Normally as a rule of prudence when the similar issue is pending before the Hon'ble Gujarat High court, this court would have awaited unless and until any directions or orders are passed by the Hon'ble High court but since there are directions issued by the hon'ble Sessions judge (moreover twice the directions are issued) and therefore in order to comply with the directions in true spirit this court deems it fit to decide the present issue on hand.
19. In the present case charges against the accused are not yet framed. Therefore, the issue before this court is whether

this court has power to order further investigation before the framing of charges? The answer appears to be in affirmative as the hon'ble apex court in the case of Vinubhai Haribhai Malaviya Versus State Of Gujarat has held that application for further investigation filed by the complainant can be entertained before the trial actually commences. The Hon'ble Supreme Court has made following observations in para 38 which are reproduced herein as under:

38. There is no good reason given by the Court in these decisions as to why a Magistrate's powers to order further investigation would suddenly cease upon process being issued, and an accused appearing before the Magistrate, while concomitantly, the power of the police to further investigate the offence continues right till the stage the trial commences. Such a view would not accord with the earlier judgments of this Court, in particular, Sakiri (supra), Samaj Parivartan Samudaya (supra), Vinay Tyagi (supra), and Hardeep Singh (supra); Hardeep Singh (supra) having clearly held that a criminal trial does not begin after cognizance is taken, but only after charges are framed. What is not given any importance at all in the recent judgments of this Court is Article 21 of the Constitution and the fact that the Article

*demands no less than a fair and just investigation. To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's nod under Section 173(8) to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases midway through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a prima facie guilty person is not so left out. There is no warrant for such a narrow and restrictive view of the powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156(1), Section 2(h), and Section 173(8) of the CrPC, **as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually commences.** It would also be in the interest of justice that this power be exercised suo motu by the Magistrate himself, depending on the facts of each case. **Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in***

accordance with law. If, for example, fresh facts come to light which would lead to inculcating or exculpating certain persons, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding further delay being caused in concluding the criminal proceeding, as was held in Hasanbhai Valibhai Qureshi (supra).

Therefore, to the extent that the judgments in Amrutbhai Shambubhai Patel (supra), Athul Rao (supra) and Bikash Ranjan Rout (supra) have held to the contrary, they stand overruled. Needless to add, Randhir Singh Rana v. State (Delhi Administration) (1997) 1 SCC 361 and Reeta Nag v. State of West Bengal and Ors. (2009) 9 SCC 129 also stand overruled.

20. But in the present facts and circumstance of the case under the garb of “further investigation” what the applicant is seeking is “reinvestigation” of the offences by senior and experienced police officials. The law appears to be well settled that even on merits the court has no power to order the reinvestigation of the offences, it is within the exclusive domain of the hon’ble High court & hon’ble Supreme court. Further it deserves to be stated that the word used is “further” which means “additional” or “supplemental”.

Moreover a perusal of relief part of present application would reveal that the complainant is seeking is a investigation by a “experienced and senior police officer”. The power to order further investigation is limited and can be granted in facts and circumstances only to that person who has done the investigation “himself” and filed report not other than that, otherwise it would amount to “reinvestigation” which this court does not have power. This court does not have power to order investigation to another “experienced and senior police officer.”

21. Further, the application of complainant for Further Investigation has not been supported by any affidavit which is also a ground to reject the present application.
22. Further, when the complainant has mentioned that Test identification parade was not conducted by the investigating officer, but the law appears to be well settled that the identification in TIP of an accused is not a substantive piece of evidence at now at a belated stage merely TIP was not conducted during investigation, further investigation cannot be granted for conducting TIP when there is other ample evidence available to frame charges against the present accused.

23. The complainant has asked for collection of bank account statements which in the present case is not a relevant factor as such because the case is not of financial fraud but of physical assault. Apart from above lapses, further the perusal of written arguments by the complainant-applicant would reveal that a huge number of lapses have been pleaded in the investigation on the part of the investigating officer, now in the opinion of this court in order to fill up those huge number of lapses a “reinvestigation” is the only course available with the applicant and not “further investigation” for example the applicant in para 10 of the arguments it is pleaded that the “the investigating officer has not recorded the statements of the witnesses properly” now if the present application if allowed that would amount to fresh investigation or de-novo investigation which this court does not have power to order.

24. Present application as prayed for in the application of further investigation vide Exhibit 10 does not inspire the confidence of this court to exercise its power u/s. 173(8) of Cr.P.C, 1973 as the scope of section 173(8) is limited to additional or supplemental investigation. Thus the present petition in view of foregoing discussion and in the interest of

justice is devoid of any merit, this court passes the following final order:

FINAL ORDER

1. This application for further Investigation filed vide Exhibit 10 is hereby rejected.
2. There is no order as to costs.
3. The observations made in this order will not affect the trial of this criminal case and is limited for deciding present application only.

Pronounced in the open Court today on this 12th July 2024.

(Bharat Ramchand Lakhwani)

7th Judicial Magistrate First Class, Bharuch

Judge Code-GJ01711