IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 1188 of 2021

With
CRIMINAL MISC.APPLICATION (FOR STAY) NO. 1 of 2021
In R/SPECIAL CRIMINAL APPLICATION NO. 1188 of 2021

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DIPAKBHAI DHANJIBHAI PATEL
Versus
STATE OF GUJARAT

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Appearance:
MR. NISHIT P GANDHI(6946) for the Applicant(s) No. 1
for the Respondent(s) No. 2
MR HARDIK SONI APP (2) for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE ILESH J. VORA**

Date : 26/11/2021

ORAL ORDER

1. Heard Mr. IH Syed, learned Senior Counsel assisted by Mr. Nishit P. Gandhi, learned advocate for the applicant and Mr. Hardik Soni, learned APP for the respondent State.

2. By way of this petition, the petitioner seeks to quashing of the FIR being M.Case No. 1 of 2020 registered with Navsari DCB Police Station, Dist.: Navsari for the offence mentioned therein.

3. It is submitted that on bare reading of the FIR, none of the alleged offences, made out qua present petitioner. That the impugned FIR has been lodged with malafide intention and oblique motive. That filing of the FIR is sheer abuse of process of law, as earlier, on the same set of facts, the respondent no. 2 lodged FIR for the same offence, which was registered as FIR being I. CR No.37 of 2018 dated 21.3.2018. That suppressing the facts of earlier FIR, the respondent no.2 filed private

complaint before the learned Special Judge, invoking the provisions of Prevention of Corruption Act.

4. Having heard learned Senior Counsel for the petitioner and on bare perusal of the FIR, it appears that at relevant point of time, the petitioner was Sarpanch of the village and therefore, he can be said to be a 'public servant' as defined under Section 21 of the IPC. The private complaint Inquiry Case No. 1 of 2020 is being filed on 2.1.2020, whereby, upon receipt of the complaint, learned Special Judge, Navsari vide his order dated 7.1.2020 referred the matter for investigation by ACB Police Station, exercising powers under Section 156(3) of the Cr.P.C. Section 17A of the Prevention of Corruption Act, 1988 provides that no police officials shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties without the previous approval.

5. This Court is of the considered view that prior to this proceedings, the respondent no. 2 had lodged FIR for the alleged offence invoking provisions of IPC. The record indicates that while filing the private complaint, the respondent no.2 suppressed the fact of earlier FIR. Thus, mater deserves consideration.

6. Let notice be issued to the respondents returnable on 24.03.2022. Learned APP waives service of notice on behalf of respondent State. In the meantime, there shall be no coercive steps be taken against the applicant. However, Investigation may continue. The applicant is directed to cooperate with the investigation.

(ILESH J. VORA,J)

P.S. JOSHI