

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 2010 of 2021

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KRISHNAVADAN SOMNATH BRAHMBHATT

Versus

STATE OF GUJARAT

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Appearance:

MR. BHADRISH S RAJU(6676) for the Applicant(s) No. 1

NIMIT Y SHUKLA(8338) for the Applicant(s) No. 1

MR PS CHAMPANERI(214) for the Respondent(s) No. 2

PUBLIC PROSECUTOR(2) for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 12/07/2021

ORAL ORDER

1. Heard Mr. Bhadrish S. Raju, the learned advocate for the applicant and Mr. P.S. Champaneri, the learned advocate appearing for the respondent No. 2.

2. It is reported that case before the trial Court has been fixed today in the second session.

3. On 24.02.2021 this Court passed the following order :

“By way of present application, the applicant has prayed to quash and set aside the order dated 03.02.2021 passed under Exh.6 (at Annexure- A) in Criminal Case No.36580 of 2019 pending before the learned Additional Chief Metropolitan Magistrate, Court No.16, Ahmedabad.

Heard learned advocate for the applicant.

It is submitted by learned advocate for the applicant that the applicant has filed an application

under Exh.68 on the ground that the person proposed to be summoned is responsible being in official position for the management of electronic record of the relevant activities which is a prerequisite under Section 65B of the Information Technology Act, 2002. However, the learned Judge has committed an error in rejecting the application for examination of the witnesses. That under Section 244 of the Code of Criminal Procedure, 1973, the powers of Magistrate are unfettered and it can summon any witness directing him to attend and/or produce any document or a thing necessary for the just decision of the case pending before its Court. That Mr. Rohan Gupta being the National Head of the Social Media Department of Indian National Congress is required to be summoned as he would be the most conversant person to know the whereabouts of the original video published in the social media. That the learned Trial Court has rejected the application vide order dated 03.02.2021 on the ground that there was no relevance of calling such witness. In support of his arguments, learned advocate for the applicant has relied upon the judgment in the case of Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal and others reported in (2020) 7 SCC 1.

Issue requires consideration.

Hence, Notice, returnable on 10.03.2021. Learned APP waives service of notice for and on behalf of the respondent - State.

The applicant may approach the learned Trial Court to adjourn the matter and the learned Trial Court may consider the prayer of the applicant till the next date of hearing.”

4. In view of the aforesaid, the applicant is at liberty to approach the trial Court to adjourn the matter and the learned trial Court may consider the same till next date of hearing.

Matter is adjourned to 24.08.2021. **Direct service as well as Direct service through E-mode today is permitted.**

P.S. JOSHI

(ILESH J. VORA,J)