

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION NO. 2899 of 2020**

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HARESH DEVJIBHAI JODHANI

Versus

STATE OF GUJARAT

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Appearance:

MR. SUHAIL Z SAIYED(6690) for the Applicant(s) No. 1,2,3

for the Respondent(s) No. 2

MR. H.K. PATEL, APP for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR. JUSTICE B.N. KARIA****Date : 20/07/2020****ORAL ORDER**

Draft amendment for correcting the date is hereby allowed. Necessary amendment shall be carried out.

By way of present petition, petitioners have requested to quash the impugned complaint filed by the complainant bearing M. Case No.2 of 2019 registered with Dhoraji Police Station, District- Rajkot (Rural) on 07.08.2019 for the offence punishable under Section 304 and 114 of Indian Penal Code and also quash and set aside the impugned orders dated 15.04.2019 and 09.09.2019 passed by learned Judge, Dhoraji as well as stay the further proceedings of the impugned complaint filed by the complainant bearing M. Case No.2 of

2019 registered with Dhoraji Police Station, District- Rajkot (Rural) on 07.08.2019 for the offence punishable under Section 304 and 114 of Indian Penal Code, till hearing and final disposal of the present petition.

Heard learned advocate for the petitioners.

Learned advocate for the petitioners submits that the elder brother of the complainant met with an accident by falling down from his motor cycle on 06.09.2017 and died on the spot. Initially, on 10.09.2017, he preferred a complaint before the Dhoraji Police Station and other authorities, but no steps were taken or any FIR was registered. Thereafter, on 10.01.2019, the complainant approached the learned JMFC, Dhoraji by filing an application, which was converted into the Inquiry Case No. 1 of 2019. Leaned JMFC, Dhoraji, by an order, directed for detailed inquiry and submitted an appropriate report within 30 days under Section 210 of Code of Criminal Procedure, 1973. Thereafter, the police submitted a detailed report stating that after detailed inquiry, no criminal offence could be found to be attracted against any of the

proposed accused. Despite the report, learned JMFC, Dhoraji, vide order dated 15.04.2019 and subsequent order dated 09.09.2019, initiated proceedings under Section 156 (3) against the petitioners without any reasons. It is further submitted that pursuant to the aforesaid orders, FIR came to be registered, being M. Case No.2 of 2019, with Dhoraji Police Station, District- Rajkot (Rural) on 07.08.2019 for the offence punishable under Section 304 and 114 of the Indian Penal Code. That, the impugned orders are illegal as well as contrary to the facts and law. That, petitioners Nos.1 and 2 were the Executive and Assistant Engineers in Gujarat Water Supply and Sewage Board and petitioner No.3 was supervisor of M/s. Pratibha Industries, which was given a contract of building, operation and management of constructing sewage line in Dhoraji Town. That, complaint was lodged after inordinate and unexplained delay more than one and half years. That, in the entire complaint, there is no motive and knowledge has been culled out from the facts of the case for constituting any offence punishable under Section 304 and 114 of the Indian

Penal Code. That detailed inquiry and inspection was made by the police authorities. That, present petitioners have no active role in the said offence. That so far as the work of road, building or resurfacing of the road is concerned, it was not coming under the Department of the Petitioner Nos.1 and 2.

Issue requires consideration.

Rule returnable on 17.08.2020. Learned APP waives service of notice of rule for and on behalf of respondent-State.

No coercive actions shall be taken against the present petitioners till the next date of hearing qua the FIR in question.

Registry is directed to send a copy of this order to the concerned police station through fax or e-mail forthwith.

(B.N. KARIA, J)

TAUSIF SAIYED