

(v  
W.P.(Crl.)No. 109 OF 2003

ITEM No.301

Court No. 1

SECTION PIL

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Writ Petition(Crl.) No. 109/2003( For Preliminary Hearing )

NATIONAL HUMAN RIGHTS COMMISSION

Petitioner (s)

VERSUS

STATE OF GUJARAT & ORS.

Respondent (s)

( With Appln(s). for intervention. and exemption from filing O.T.)  
With

T.P.(Crl.) No.194-202/2003 (for prel. hearing) (National Human Rights Commission vs. State of Gujarat & ors.) (with appln.(s) for stay and exemption from filing copies of FIR and impleading party and office report),  
W.P.(Crl.)No.D17953/2003 (for prel. hearing) (Umed Singh Gulia vs. Union of India & Anr.) (with office report) and  
SLP(Crl.)No.3770/2003 (Citizens for Justice & Peace & Ors. vs. State of Gujarat & Ors.) (with appln.(s) for permission to place addl. documents on record and directions and filing addl. facts and documents and office report).

Date : 19/09/2003 These Petitions were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE BRIJESH KUMAR  
HON'BLE MR. JUSTICE S.B. SINHA

For Petitioner (s)

in WP 109 &Mr. P P Rao, Sr. Adv.

TP 194-202

Mr. T R Andhyarujina, Sr. Adv.

Mr. S. Muralidhar, Adv.

Mr. Somiran Sharma, Adv.

Mr. Rajat Khosla, Adv.

in WPD17953In person.

in SLP 3770Mr. Colin Gonsalves, Adv.

Mr. Mihir Desai, Adv.

Ms. Aparna Bhat, Adv.

Mr. P Ramesh Kumar, Adv.

For Respondent (s)

Union of IndiaMr. Kirit N Raval, Solicitor General

Mr. A Mariarputham, Adv.

Mr. Prateek Jalan, Adv.

Ms. Sushma Suri, Adv.

Ms. Aruna Mathur, Adv.

State of GujaratMr. Mukul Rohtagi, ASG

Mr. P S Mishra, Sr. Adv.

Mr. Kamal Trivedi, Addl. Adv. Genl.

Ms. Hemantika Wahi, Adv.

R.Nos.2-22 in Mr. K T S Tulasi, Sr. Adv.  
WP 109Mr. P H Parekh, Adv.  
Mr. E R Kumar, Adv.  
Mr. Lalit Chauhan, Adv.  
Mr. Vijay H Patel, Adv.

For Petitioner (s)  
in intervention/  
impleadment petns  
in WP 109.Mr. P S Mishra, Sr. Adv.  
Mr. Arvind Sawant, Sr. Adv.  
Mr. Tathagat H Vardhan, Adv.  
Mr. Amitesh C Mishra, Adv.  
Dr. Indra Pratap Singh, Adv.  
Mr. C D Singh, Adv.  
Mr. R K Singh, Adv.

Dr. Nafis A Siddiqui, Adv.  
Dr. K S Chauhan, Adv.

in TP 194-202Mr. Colin Gonsalves, Adv.  
Mr. Mihir Desai, Adv.  
Ms. Aparna Bhat, Adv.  
Mr. P Ramesh Kumar, Adv.

UPON hearing counsel the Court made the following  
O R D E R

Statements of Shri P.K. Laheri, Chief Secretary to Government of Gujarat and Shri K. Chakravarthi, Director General of Police, Gujarat State, recorded without oath being administered. An affidavit has been filed by the Chief Secretary to Government of Gujarat. Learned Additional Solicitor General appearing

for the State of Gujarat prays for and is allowed two weeks' time to file a further affidavit.  
List these matters on 9th October, 2003 at 10.30 A.M. before this Bench.

(D.P. WALIA) (SURAJ PARKASH)  
COURT MASTERCOURT MASTER

(Signed Statements of Shri P.K. Laheri, Chief Secretary to Government of Gujarat and Shri K. Chakravarthi, Director General of Police, Gujarat State, recorded without oath being administered, are attached)

STATEMENT OF SHRI P.K. LAHERI, CHIEF SECRETARY TO GOVERNMENT OF GUJARAT WITHOUT OATH :

Ques: Do you want to reply in camera or in court ?

Ans: If it relates to a sensitive matter .....

Hon. CJ : I will not ask any question relating to a sensitive matter.

Ques: What is your name ?

Ans: P.K. Laheri working as Chief Secretary to the Government of Gujarat since 1st May, 2003.

Ques: You have filed an affidavit on 19th September, 2003. Is it your affidavit?

Ans: This is my affidavit.

Ques: Whether the contents of this affidavit are true to your knowledge and voluntary also.

Ans: Yes Sir.

Ques: What is the prosecuting hierarchy in your State ?

Ans: The investigating agency is the police officials investing the matter. When the charge-sheet is framed, the matter is handled by District Government Pleaders and Public Prosecutors who are selected as a panel in consultation with the District Magistrate and District Judge together. After interviews, the panel is submitted to our Legal Department who ultimately decides on the appointment of the Government Pleaders, Assistant Government Pleaders who work as Public Prosecutors.

Ques: Who is the in-charge of prosecution in the State ?

Ans: Our Legal Department is in-charge of the prosecution and appeal matters.

Sd/-

(P.K. Laheri)

Ques: Is the Government the appointing authority of these public prosecutors?

Ans: The Legal Department makes the appointment.

Ques: Is the Government appointing authority ?

Ans: Government is the appointing authority.

Ques: Is there any separate cadre for public prosecutors ?

Ans: No Sir, they are selected from the people practising at the Bar.

Ques: Whether the Govt. also gives instructions to the public prosecutors ?

Ans: Public prosecutors are briefed by the investigating officers.

Ques: Whether Government is the prosecuting authority and also gives instructions to Public Prosecutors ? Is it correct or not?

Ans: Under the law, Government is the prosecuting authority.

Ques: Whether the Government also gives instructions to the prosecuting agency ?

Ans: On that Civil Administration cannot give any instructions .. Home Department.. Yes, Government also gives instructions to the prosecuting agency.

Ques: Do you know there was a case of Best Bakery?

Ans: Yes Sir.

Ques: Whether it was in your knowledge ?

Ans: Sir, the file does not come to me under the Rules of Business because it is being dealt with by the Legal Department. Whenever any judgment is received, the question of appeal is decided in the Legal Department.

Ques: You have nothing to do with the matter ?

Ans: Sir, if a Minister or Chief Minister asks me to look into the matter, I do have to look into the matter.

Ques: Did you file this affidavit on asking of some one?

Sd/-

(P.K. Laheri)

Ans: I was advised by the Assistant Advocate General, Advocate General to file an affidavit.

Ques: Whether you have taken any permission from the Government ?

Ans: Sir, I did inform Ministry of Law, Ministry Home and Chief Minister about my filing the affidavit.

Ques: So you are filing this affidavit with their permission ?

Ans: I have informed them. With their permission I am filing it.

Ques: In para 2(c) of your affidavit, you say 'the grounds of appeal be amended and filed subject to settlement by the learned Advocate General'.

Ans: I have requested Hon'ble Advocate General to kindly go through the papers and amend the appeal memo keeping in view the interest of justice.

Ques: Is it the Advocate General who will decide what amendment is to be incorporated and not the State Government ?

Ans : Sir.

Ques: What do you spell out from the amendment - omission, alteration, addition, substitution ? What amendment ? In what manner you are going to amend it ?

Ans: As far as the criminal appeal is concerned. In the manner in which the Advocate General would find it in the interest of justice.

Ques: You have filed an affidavit and say 'the grounds of appeal be amended and filed...'. What amendment you are going to incorporate in the memo of appeal?

Ans: Under the Act, the provisions for retrial will be specifically brought out that since the lower court had many hostile witnesses the Advocate General advises that we should seek retrial.

Ques: So the proposed amendment is that you will be seeking retrial in the matter?

Ans: Sir.

Sd/-

( P.K. Laheri)

Ques: Are you well versed with this case?

Ans: After I received the summons I have gone through the papers once.

Ques: (by Hon. Sinha, J) Do you have a separate Directorate for Prosecution ?

Ans: No Sir, we have not been able to notify separate arrangement under Section 25 but there are two views in the Government. We empower the Home Department to conduct prosecution. Some States like Tamilnadu they have Directorate of Prosecution and that might be more conducive. The present system is from the Bombay Presidency. There is difference of opinion in the Government.

Ques: Is there Director General of Police (Prosecution) ?

Ans: No Sir. The post was created by notification under Section 25 to enable him to work under the Home Department, it was not approved because the Law Department felt that the present arrangement is adequate and since we have inherited it from the Bombay Presidency we may continue.

Ques: If we come to the view that fresh investigation is required ...?

Ans: I have no instructions.

Ques: Will you be ready for an independent agency like CBI or other ?

Ans: This requires approval of the State Government as per law and I have no instructions.

Sd/-

(P.K. Laheri)

19-9-2003

STATEMENT OF SHRI K. CHAKRAVARTHI, DIRECTOR GENERAL OF POLICE, GUJARAT STATE WITHOUT OATH :

Ques: What is your name ?

Ans: Chakravarthi, Director General of Police, Gujarat State since 1st April, 2001.

Ques: Whether as Director General of Police, you are incharge of police force of the State?

Ans: Yes Sir.

Ques: Since you are there since 2001, are you aware of Best Bakery case?

Ans: I am.

Ques: Whether in this case the trial commenced on 20th February, 2003 ?

Ans: Yes Sir.

Ques: Do you know that on 9th May, 2003 Shaheerabanu, Nafitulla Habibulla Shaikh and Bharat Bhai Tadvi appeared as witnesses for prosecution and turned hostile?

Ans: Sir.

Ques: Had it not struck to you why they have turned hostile ?

Ans: It did occur to me.

Ques: What steps you took ?

Ans: I came to know about it after they turned hostile.

Ques: You could have said that they may be re-examined. There was nothing in the cross-examination?

Ans: Steps have been taken by the Prosecutors.

Ques: You are Head, Director General of Police. Why have you not taken any steps?

Ans: I can only submit that as per the practice and procedure we have been

Sd/-

K. Chakravarthi

observing this is being done only when it is brought to our notice by Public Prosecutor who conducts the trial.

Ques: Was it not your duty to ask the Public Prosecutor to re-examine the witnesses?

Ans: At the relevant time, I did not know. I did not take any step after having come to know that these witnesses on 9th May, 2003 have turned hostile.

Ques: Again on 17th May, 2003, Shaikh Zahirabhai Habibulla, Habibulla Shaikh and Raju Nasibulla a Habibulla they turned hostile. When did you come to know ?

Ans: This I came to know much later not on the same day, much later. I do not know the date but it was subsequently.

Ques: When you came to know, what steps did you take ?

Ans: I did ask the Police Commissioner why they turned hostile. Answer is they appear to have been won over. I have made enquiry from the Police Commissioner who told me that these witnesses appear to have been won over by the accused.

Ques: If Police Commissioner told that witnesses are turned hostile because they are won over, why have you not taken any steps for their re-examination?

Ans: I came to know at much later date.

Ques: (by Hon. Sinha, J.) Do you mean to say that you asked the Police Commissioner only after the judgment of acquittal was passed?

Ans: I do not remember the exact date.

I did not take any steps even after coming to know that witnesses have been won over by the accused.

Sd/-

K. Chakravarthi

Ques: On 7th June, 2003 and 9th June, 2003 more witnesses turned hostile, it was a going-on process. Did you take any action?

Ans: At the relevant time I did not come to know. Much later I came to know.

Ques: Do you want to say that after the case was over you came to know? When did you come to know?

Ans: Much later from the press reports. I came to know about the witnesses turning hostile on the publication in the newspapers the next day.

Ques: Are you also aware that on 21st June, 2003 after the Investigating Officer was examined all the 21 accused were examined on the same date?

Ans: Subsequently I came to know.

Ques: Do you know that the judgment was delivered on 27th June, 2003?

Ans: I came to know after some time.

Ques: Have you gone through the judgment of the trial court?

Ans: Much later I have gone through.

Ques: The trial court said: "It is difficult for a common man to understand that in a judicial proceedings involving crime of such a large magnitude, nobody has been convicted and punished.... There is not an iota of evidence produced on the record of the case which can be legally accepted and which remotely connects the accused with the charges levelled against them." Then, "From the case papers of the police investigation, there appears to be clear circumstances to believe that the police officers have abruptly and arbitrarily recorded the so-called statement of witnesses subsequently and have falsely incorporated the names of the accused persons." Then, "In short, there is no cogent, reliable and legal evidence produced on record before this Court so as to establish guilt against the accused who are produced

Sd/-

K. Chakravarthi

before this Court. Looking to the circumstances of the case, it clearly transpires from the judicial scrutiny of the evidence produced on record of the case that totally false evidence has been created against the accused." Do you agree with this?

Ans: I do not agree with this.

Ques: Do you say that the police has acted correctly and honestly?

Ans: Yes, in accordance with law, the correct accused have been charge-sheeted. Statement recorded under Section 161 is correct.

Ques: Do you say that the statement of prosecution witnesses recorded under Section 161 Cr.P.C. was on a blank paper, is incorrect?

Ans: Yes. The statement of all the witnesses who turned hostile and who said that their signatures were taken subsequently, was not correct.

Ques: When you knew that the statements of prosecution witnesses who turned hostile are not true and voluntarily, why you have not advised that the witnesses should be re-examined?

Ans: This is one of the things in the appeal which is under prosecution and consideration.

Ques: Do you know that the appeal has already been filed?

Ans: Yes.

Ques: When you know that the statement taken by the police officers under Section 161 is correct and what the witnesses stated in the court was incorrect, then why have you not taken plea in appeal for retrial or witnesses may be re-examined? It ought to have been taken?

Ans. Because it was to be contested in the appeal. That is the reason. For some reasons, it could not be taken in the appeal.

Sd/-

K. Chakravarthi

