REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1765 OF 2011
(ARISING OUT OF S.L.P. (CRL.) NO. 1088 OF 2008)

JAKIA NASIM AHESAN & ANR. — APPELLANTS

VERSUS

STATE OF GUJARAT & ORS. — RESPONDENTS

O R D E R

1. Leave granted.

2. This appeal by special leave, arises out of the judgment dated 2nd November, 2007, delivered by the High Court of Gujarat at Ahmedabad in Special Criminal Application No. 421 of 2007, dismissing the writ petition preferred by one of the hapless victims of the abominable and woeful events which took place in the State of Gujarat between February, 2002 and May, 2002 after the abhorrent Godhra incident on 27th February, 2002. By the said petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (for short "the Code"), the appellant had sought for a direction to the Director General of Police, State of Gujarat, to register her private complaint dated 8th June, 2006 as a First Information Report and direct investigation therein by an independent agency. By the impugned judgment, the High Court has come to the

conclusion that since a remedy under Section 190 read with Section 200 of the Code was available to the appellant, the writ petition was not tenable. The writ petition was accordingly dismissed by the High Court with the observation that if the appellant had got certain additional material against some persons accused in her complaint, it was open to her to approach the investigating agency, requesting further investigation, or, alternatively she could herself approach the Court concerned for further investigation in terms of Section 173(8) of the Code.

3. The appellant lost her husband, a former Member of Parliament, in the calamitous events which took place on 28th February, 2002, in the surroundings of Gulberg Society, Ahmedabad, where the appellant resided along with her family. An FIR relating to the incident was registered by the Police with Meghaninagar Police Station, Ahmedabad. After investigation, on the filing of the charge-sheet, the case was committed to the Court of Sessions, Ahmedabad. It was the case of the appellant that subsequently she received certain material which showed that the incidents which took place during the period between 27th February, 2002 and 10th May, 2002, were aided, abetted and conspired by some responsible persons in power, in connivance with the State Administration, including the Police. The appellant thus sought registration of another FIR against certain persons named in the complaint, dated 8th June, 2006, for offences punishable under Section 302 read with

Section 120B as also under Section 193 read with Sections 114, 186 & 153A, 186, 187 of the Indian Penal Code, 1860. However, as the police declined to take cognizance of her complaint, the appellant filed the aforementioned petition before the High Court. Having failed to convince the High Court that it was a fit case for investigation by an independent agency, the appellant-complainant, supported by an NGO, is before us in this appeal.

4. On 3rd March, 2008 while issuing notice to the Union of India and State of Gujarat, an Amicus Curiae was appointed to assist the Court. Vide order dated 27th April, 2009, the Special Investigation Team (for short "the SIT"), which had been constituted vide order dated 26th March, 2008 to carry out further investigations in nine cases, subject matter of Writ Petition No. 109 of 2003, was directed 'to look into', the complaint submitted by the appellant on 8th June, 2006 to the Director General of Police, Gujarat. Pursuant to the said direction Shri A.K. Malhotra, former D.I.G. (C.B.I.) and one of the members of the SIT, examined a number of witnesses and looked into a large number of documents made available to him. A report, dated 12th May, 2010, was submitted to this Court by the Chairman, SIT, concurring with the findings of Shri A.K. Malhotra.

5. In his report dated 12th May, 2010, Shri A.K. Malhotra, *inter alia* recommended further investigation under Section 173(8) of the Code

against certain Police officials and a Minister in the State Cabinet. Consequently, further investigation was conducted and a report dated 17th November, 2010, was submitted by the SIT. On 23rd November, 2010, Shri Raju Ramachandran, Senior Advocate and Shri Gaurav Agarwal, Advocate, replaced the previous Amicus Curiae, who had expressed his unwillingness to continue.

6. On 20th January, 2011, a preliminary note was submitted by Shri Raju Ramachandran, the learned Amicus Curiae; whereon, vide order dated 15th March, 2011, the SIT was directed to submit its report, and if necessary carry out further investigation in light of the observations made in the said note. The SIT conducted further investigation under Section 173(8) of the Code in Meghaninagar Police Station Crime Report No.67 of 2002—Gulberg Society case, and submitted a report on 24th April, 2011. After examining the said report, on 5th May, 2011, the following order was passed :

> "Pursuant to our order dated 15th March, 2011, the Chairman, Special Investigation Team (SIT) has filed report on the further investigations carried out by his team along with his remarks thereon. Statements of witnesses as also the documents have been placed on record in separate volumes. Let a copy of all these documents along with the report of the Chairman be supplied to Mr. Raju Ramachandran, the learned Amicus Curiae.
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> The learned Amicus Curiae shall examine the report; analyze and have his own independent assessment of the statements of the witnesses recorded by the SIT and submit his comments thereon. It will be open to the learned Amicus Curiae to interact with any of

the witnesses, who have been examined by the SIT, including the police officers, as he may deem fit.

If the learned Amicus Curiae forms an opinion that on the basis of the material on record, any offence is made out against any person, he shall mention the same in his report."

7. The learned Amicus Curiae has now submitted his final report dated 25th July, 2011. In light of the above conspectus and the report of the learned Amicus Curiae, the question for determination is the future course of action in the matter.

8. We are of the opinion that bearing in mind the scheme of Chapter XII of the Code, once the investigation has been conducted and completed by the SIT, in terms of the orders passed by this Court from time to time, there is no course available in law, save and except to forward the final report under Section 173 (2) of the Code to the Court empowered to take cognizance of the offence alleged. As observed by a three-Judge Bench of this Court in ***M.C. Mehta (Taj Corridor Scam)*** *Vs.* ***Union of India & Ors.***[1], in cases monitored by this Court, it is concerned with ensuring proper and honest performance of its duty by the investigating agency and not with the merits of the accusations in investigation, which are to be determined at the trial on the filing of the charge-sheet in the competent Court, according to the ordinary procedure prescribed by law.

9. Accordingly, we direct the Chairman, SIT to forward a final report, along with the entire material collected by the SIT, to the Court which had taken cognizance of Crime Report No.67 of 2002, as required under Section 173(2) of the Code. Before submission of its report, it will be open to the SIT to obtain from the Amicus Curiae copies of his reports submitted to this Court. The said Court will deal with the matter in accordance with law relating to the trial of the accused, named in the report/charge-sheet, including matters falling within the ambit and scope of Section 173(8) of the Code. However, at this juncture, we deem it necessary to emphasise that if for any stated reason the SIT opines in its report, to be submitted in terms of this order, that there is no sufficient evidence or

[1] (2007) 1 SCC 110

reasonable grounds for proceeding against any person named in the complaint, dated 8th June 2006, before taking a final decision on such 'closure' report, the Court shall issue notice to the complainant and make available to her copies of the statements of the witnesses, other related documents and the investigation report strictly in accordance with law as enunciated by this Court in ***Bhagwant Singh*** *Vs.* ***Commissioner of Police & Anr.***[2]. For the sake of ready reference, we may note that in the said decision, it has been held that in a case where the Magistrate to whom a report is forwarded under Section 173(2)(i) of the Code, decides not to take cognizance of the offence and to drop the proceedings or takes a view that there is no sufficient ground for proceeding against some of the persons mentioned in the FIR, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report.

10. Having so directed, the next question is whether this Court should continue to monitor the case any further. The legal position on the point is made clear by this Court in ***Union of India & Ors.*** *Vs.* ***Sushil Kumar Modi & Ors.***[3], wherein, relying on the decision in ***Vineet Narain & Ors.*** *Vs.* ***Union of India & Anr.***[4], a Bench of three learned Judges had observed thus :

> "…that once a charge-sheet is filed in the competent court after completion of the investigation, the process of monitoring by this Court for the purpose of making the CBI and other investigative agencies concerned perform their function of investigating into the offences concerned comes to an end; and thereafter it is only the court in which the charge-sheet is filed which is to deal with all matters relating to the trial of the accused, including matters falling within the scope of Section 173(8) of the Code of Criminal Procedure. We make this observation only to reiterate this clear position in law so that no doubts in any quarter may survive."

11. In ***M.C. Mehta*** *Vs.* ***Union of India & Ors.***[5], a question arose as to whether after the submission of the final report by the CBI in the Court of Special Judge, pursuant to this Court's directions, this Court should examine the legality and validity of CBI's action in seeking a sanction under Section 197 of the

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[2] (1985) 2 SCC 537
[3] (1998) 8 SCC 661
[4] (1996) 2 SCC 199
[5] (2008) 1 SCC 407

Code for the prosecution of some of the persons named in the final report. Dismissing the application moved by the learned Amicus Curiae seeking directions in this behalf, a three-Judge Bench, of which one of us (D.K. Jain, J.) was a member, observed thus:

> "The jurisdiction of the Court to issue a writ of continuous mandamus is only to see that proper investigation is carried out. Once the Court satisfies itself that a proper investigation has been carried out, it would not venture to take over the functions of the Magistrate or pass any order which would interfere with his judicial functions. Constitutional scheme of this country envisages dispute resolution mechanism by an independent and impartial tribunal. No authority, save and except a superior court in the hierarchy of judiciary, can issue any direction which otherwise takes away the discretionary jurisdiction of any court of law. Once a final report has been filed in terms of sub-section (1) of Section 173 of the Code of Criminal Procedure, it is the Magistrate and Magistrate alone who can take appropriate decision in the matter one way or the other. If he errs while passing a judicial order, the same may be a subject-matter of appeal or judicial review. There may be a possibility of the prosecuting agencies not approaching the higher forum against an order passed by the learned Magistrate, but the same by itself would not confer a jurisdiction on this Court to step in."

12. Recently, similar views have been echoed by this Court in ***Narmada Bai*** *Vs.* ***State of Gujarat & Ors.***[6]. In that case, dealing with the question of further monitoring in a case upon submission of a report by the C.B.I. to this Court, on the conclusion of the investigation, referring to the earlier decisions in ***Vineet Narain*** (supra), ***Sushil Kumar Modi*** (supra) and ***M.C. Mehta (Taj Corridor Scam)*** (supra), speaking for the Bench, one of us, (P. Sathasivam, J.) has observed as under :

> "70. The above decisions make it clear that though this Court is competent to entrust the investigation to any independent agency, once the investigating agency complete their function of investigating into the offences, it is the court in

[6] (2011) 5 SCC 79

> which the charge-sheet is filed which is to deal with all matters relating to the trial of the accused including matters falling within the scope of Section 173(8) of the Code. Thus, generally, this Court may not require further monitoring of the case/investigation. However, we make it clear that if any of the parties including CBI require any further direction, they are free to approach this Court by way of an application."

13. Deferentially concurring with the dictum of this Court in the aforenoted decisions, we are of the opinion that in the instant case we have reached a stage where the process of monitoring of the case must come to an end. It would neither be desirable nor advisable to retain further seisin over this case. We dispose of this appeal accordingly.

14. Before parting, we direct the State of Gujarat to reimburse to Shri Raju Ramachandran, all the expenses borne by him for travel from Delhi to Ahmedabad and back. We also place on record our deep appreciation for the able assistance rendered to us by Shri Raju Ramachandran and Shri Gaurav Agarwal, the learned Amicus Curiae.

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(D.K. JAIN, J.)

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(P. SATHASIVAM, J.)

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(AFTAB ALAM, J.)

NEW DELHI;
SEPTEMBER 12, 2011.
ARS

ITEM NO. 1-A COURT No.5 SECTION IIB
(For orders)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CRIMINAL APPEAL NO.1765 OF 2011 @
PETITION FOR SPECIAL LEAVE TO APPEAL (Criminal) NO. 1088 of 2008

Jakia Nasim Ahesan & Anr. .. Appellant(s)

Versus

State of Gujarat & ors. .. Respondent(s)

DATE : 12/09/2011 This case was called on for pronouncement of order today.

Mr. Raju Ramachandran, Sr. Adv. (A.C.)
Mr. Gaurav Agrawal, Adv. (A.c.)

For Appellant(s) Mr. P Ramesh Kumar, Adv.
Ms. Aparna Bhat, Adv.

For Respondent(s) Mr. Mukul Rohtagi, Sr. Adv.
Mr. Ranjit Kumar, Sr. Adv.
Ms. Hemantika Wahi, Adv.
Ms. Jesal, Adv.
Mr. Suveni Banerjee, Adv.

Mr. E.C. Agrawala, Adv.

Mr. A Venayagam Balan, Adv.

Mr. N. Ganpathy, Adv.

Hon'ble Mr. Justice D.K. Jain pronounced the order of the Bench comprising His Lordship, Hon'ble Mr. Justice P. Sathasivam and Hon'ble Mr. Justice Aftab Alam.

Leave granted.

The appeal is disposed of in terms of the signed order. The Court also observed as follows:

..2/-

"Before parting, we direct the State of Gujarat to reimburse to Shri Raju Ramachandran, all the expenses borne by him for travel from Delhi to Ahmedabad and back. We also place on record our deep appreciation for the able assistance rendered to us by Shri Raju Ramachandran and Shri Gaurav Agrawal, the learned Amicus Curiae."

[Charanjeet Kaur]
Court Master

[Kusum Gulati]
Court Master

[Signed reportable order is placed on the file]