

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (CRL) No. 6754-56 OF 2011**

IN THE MATTER OF:

CITIZEN FOR JUSTICE AND PEACE & ANR ...PETITIONERS

VERSUS

STATE OF GUJARAT AND ORS. ...RESPONDENTS

WRITTEN SUBMISSIONS ON BEHALF OF THE PETITIONERS

1. The Petitioners have been supporting victims of communal violence for over 15 years. The Petitioners has filed various petitions before this Hon'ble Court as well as High Court of Gujarat in support of the victims of the Communal violence that took place in 2002.
2. The Petitioner 2 herein had approached the National Human Rights Commission, after Ms. Zahira Sheikh, a key Prosecution witness who had turned hostile in the Vadodara Court hearing the Best Bakery incident, contacted her explaining that she had been coerced into turning hostile which led to the acquittal of the accused in the Best bakery case. The NHRC, subsequent to a formal statement by Ms. Sheikh recounting her ordeal, filed a SLP before this Hon'ble Court, which was converted into a Writ Petition being Writ Petition (Crl.) No.109 of 2003 by this Hon'ble Court.
3. The NHRC also filed Transfer Petition (Crl.) No. 194-202 of 2003 seeking transfer of some trials outside the State of Gujarat. The Petitioner herein filed an intervention application in the Transfer Petition filed by the NHRC. On various dates in 2003 and 2004, the Petitioner filed copies of affidavits executed by various persons who were victims of the riots

wherein they described the violence as it took place according to them. The affidavits executed by various persons (about 64) were filed alongwith Criminal Misc. Petition in Transfer Petition i.e. T.P.(Crl.) No. 194-202 of 2003 filed by the NHRC, before this Hon'ble Supreme Court to shed light on the violence faced by the victims. These affidavits, as is evident from the statements made by the witnesses, were prepared on the basis of facts as recounted by the witnesses. Since the affidavits were in English, the contents of the affidavits were explained to them in vernacular and then sworn. Thereafter, the Respondent no.3 sent them to the Petitioners in Mumbai, who sent these affidavits for filing in the Supreme Court. The Petitioner No.2 was not privy to nuances of the facts as narrated by the victims to the respondent 3 in Ahmedabad and she relied entirely on him for the purposes of collection of this information. These affidavits were filed as additional documents alongwith an application for permission to file the documents.

4. On March 26, 2008, this Hon'ble Court appointed a Special Investigation Team (SIT) in W.P. (Crl) No. 109 of 2003 (filed by NHRC) and other connected matters directing that it submit a report on the 9 trials, which were earlier, stayed by this Hon'ble Court. One of the incidents was an incident that took place in Naroda Gaam. On May 1, 2009, by a judgment and order, this Hon'ble Court directed the SIT to file supplementary charge sheets in all the 9 cases and noted that thereafter, the trials shall commence in Special Courts on a day-to-day basis (reported in 2009 (6) SCC 767). It is pertinent to note that all the trials, except the one concerned in the present case have concluded and in all the cases where the Petitioners have provided legal aid, there have been convictions.
5. During the course of the present trial, many prosecution witnesses have appeared and supported the case of the prosecution. There were over seven witnesses in the trial who had also sworn affidavits which were filed

before this Hon'ble Court. During the course of their cross examination by the Defence and they were confronted with these affidavits. In the course of the cross examination, they have differed with certain portions of the affidavit. It is admitted by all these persons that:

- a. They willingly swore the affidavits;
 - b. They purchased the stamp paper for executing them;
 - c. The affidavits were prepared in their presence;
 - d. The contents were read over to them in vernacular;
 - e. The Petitioner No.2 was not present when the affidavits were prepared;
 - f. The facts were narrated by the witnesses to Respondent 3 herein, Rais Khan.
 - g. Except for a few discrepancies, they stand by the contents of the affidavit;
6. The respondent 3 herein, Rais Khan, following his termination from the petitioner no. 1 organization, began to level a series of false allegations against the Petitioners out of sheer vindictiveness. A copy of the list of complaints initiated at the behest of the Respondent 3 is marked herewith as **ANNEXURE PS-1**. He also filed applications under section 311 of the Cr.P.C. in the then ongoing proceedings of the abovementioned trials. A list highlighting the cases in which he filed 311 applications and their outcome is marked herewith as **ANNEXURE PS-2**. He continues to be fully supported by the current administration of the State of Gujarat and has also been appointed as a member of the Central Wakf Board.
7. The applications were rejected by the concerned trial courts and in one of the cases, the Sardarpura trial (Case No. 275 of 2002), the application filed by Rais Khan u/s 311 Cr.P.C. was not only dismissed but the Court directed that a prosecution be launched against Rais Khan u/s 177, 182 of IPC with reference to Section 195(1) and 340 (1) Cr.P.C. He challenged

the same before the High Court which quashed the order and a SLP against the order of the High Court was also dismissed.

8. The present petition at hand stems from the section 311 application filed by the Respondent No. 3 in the NarodaGaam Trial (Case No. 203 of 2009). Upon hearing his application, the Court observed that:

“...the court fails to understand as to how the person who has prepared the false affidavit and who has no sanctity for the ongoing process of justice at the relevant time and who has no regards for the truth, can be trusted/relied for just decision of the case. On the face of the present application itself, the applicant does not make himself credible and reliable to become a prosecution/court witness in any trial or proceeding before this Court as he has made an attempt to play with the administration of public justice and took participation in preparing the false affidavits to be used in the judicial proceedings before the court.” (Para 12 of the order; page 37 of the SLP)

9. Despite these observations, the Court directed that a complaint be made by the Registrar of the City Civil and Sessions Court, Ahmedabad under Sections 193, 194, 195, 196, 199 and 200 and other provisions of the Indian Penal Code against RaiskhanAzizkhanPathan and “other persons” and send it to the competent Court for further proceedings. The said order has been upheld by the High Court and Rais Khan has volunteered to support the prosecution in the said case as per the statement made by him before the High Court. It is the submission of the Petitioners that while dismissing the application, the trial court misdirected itself in passing directions under Section 340 r/w 195 Cr.P.C.

10. At the outset it is submitted that the intent and purpose of submitting affidavits in the transfer petition before this Hon’ble Court was to demonstrate that the manner in which the police were registering the FIRs and recording the statements would ensure that there would be no convictions commensurate to the violence. The Petitioners did not conduct any investigation. They had made submissions before this Hon’ble Court and the affidavits were filed to merely illustrate the point. The fact that this

Hon'ble Court appointed an Amicus Curiae to independently assist the Court and the nine trials were monitored by this Hon'ble Court and the Hon'ble Court has still kept the matter pending clearly demonstrates that this Hon'ble Court was convinced that the conduct of the State police was not above board and the trials needed to be monitored.

11. It appears that during the course of investigation, the SIT had taken photocopies of these affidavits and had confronted the witnesses with the statements made in the affidavits before it filed the supplementary charge sheets. The affidavits were, therefore, used by SIT merely as statements made prior to its investigations. Therefore, the statements made under Section 161 of Cr.P.C. include what SIT had asked the witnesses with regard to their affidavits and these documents were filed under section 294 Cr.P.C. by the SIT. The Section 161 statements became part of the Supplementary Charge Sheet. When the witnesses were confronted during trial with these affidavits, it was with regard to the statements made during investigation. No affidavits were filed by the persons before the SIT or before the trial court.

12. It is submitted that photocopies of a few of the affidavits filed before the Supreme Court were also produced in another trial monitored by this Hon'ble Court. The Learned ASJ in that judgment (NarodaPatiya) recording the findings pertaining to this question, noted that there lies a distinction in the intention and nature of the affidavits executed before the Supreme Court and the deposition given by the same witnesses before the investigating officer. The Court proceeded to state:

“the reason for which the affidavits were filed before Hon'ble the Supreme Court of India that too, in a transfer petition, is absolutely different than giving statement before the Investigating Officer. Hence it cannot be treated as earlier statement of the PW in the sense that it is not the same thing. In the humble opinion of this Court these affidavits cannot be used to challenge credibility of the witnesses as submitted.”

In the petition at hand, the affidavits indicate no intention to misguide or guide if at all, the Court with respect to the subject matter of the dispute in the trial. Moreover neither the prosecution nor the deponents have relied on these affidavits. The SIT filed these documents alongwith the entire record of the Supreme Court under Section 294 of the Code eventhough these are documents that could not have been filed under section 294 as will be submitted at a later part in the submissions. It is only during the cross examination, the defence has confronted the witnesses with these affidavits as well as other affidavits the victims/witnesses have filed in other forums.