

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/SPECIAL CRIMINAL APPLICATION NO. 2414 of 2020**

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SATISH PRAVINBHAI VANSOLA

Versus

STATE OF GUJARAT

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Appearance:

MR UTKARSH J DAVE(10620) for the Applicant(s) No. 1

RAHUL SHARMA(8276) for the Applicant(s) No. 1

for the Respondent(s) No. 2,3

MR MITESH AMIN PUBLIC PROSECUTOR WITH MR. PRANAV TRIVEDI,

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

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**CORAM: HONOURABLE MS. JUSTICE GITA GOPI**

**Date : 06/07/2020**

**ORAL ORDER**

Rule. Learned Additional Public Prosecutor waives service on behalf of the respondents. With the consent of learned advocates on both the sides, the matter is taken up for final hearing today.

1. This petition has been preferred under section 482 of the Code of Criminal Procedure, 1973 seeking to quash and set aside the indictment of the offence under section 395 of IPC in the first information report being C.R. No.I-74 of 2019 registered with Chhapi Police Station, District Banaskantha for the offences under sections 143, 147, 149, 308, 152, 153, 120B, 336, 353, 427, 506(2), 341 and 395 of IPC and section 3 of the Prevention of Damage to Public Properties Act, 1984.

2. The facts in brief are as under;

A meeting was proposed to be organized in Chhapi on 19.12.2019 to commemorate the death anniversary of freedom fighters – Ashfaqullah Khan and Ram Prasad Bismil. It appears that along with the commemoration meeting, a protest meeting against the Citizenship Amendment Act, 2019 was also scheduled. In that connection, the petitioner, along with original accused no.1, had made an application dated 17.12.2019 to the authority concerned seeking permission for organizing such meeting. On the basis of the recommendation given by Chhapi Police Station, the authority concerned accorded permission to hold the meeting on 19.12.2019, vide communication dated 18.12.2019. However, on the same day, i.e. on 18.12.2019, the Police Sub-Inspector, Chhapi Police Station, addressed a letter to the authority concerned requesting to cancel the permission granted to hold such meeting. On such application, the authority concerned passed the order dated 18.12.2019 by which the permission granted to the petitioner to hold the meeting on 19.12.2019 came to be cancelled.

2.1 It is the case of the petitioner that on 19.12.2019 while accused no.1 and 4 were staying at Hotel Taj situated in Chhapi Town, they were picked up and detained by the police officials of Chhapi Police Station in the morning hours. The petitioner was also picked up from his home in the morning hours and was detained. It is the further case of the petitioner that since the petitioner and other persons, who were the main organizers of the meeting, had been detained by the police, the message regarding cancellation of permission for the meeting could not be communicated to the general public who were to attend the

meeting. Therefore, at around 10:00 am, a huge crowd began to gather at the place for the said meeting. Subsequently, when the crowd realized that permission had been cancelled, they became restive. Later in the evening, the petitioner came to know that a complaint has been registered against him and other accused persons being C.R. No.I-74 of 2019 with Chhapi Police Station for offences punishable under section 143, 147, 149, 308, 152, 153, 120B, 336, 353, 427, 506(2) and 341 of IPC and section 3 of the Prevention of Damage to Public Property Act, 1984. Subsequently, the Deputy Superintendent of Police, Palanpur made a report dated 22.12.2019 to the Magisterial Court, Vadgam requesting that offence under section 395 of IPC be added in the impugned first information report. The ground cited for addition of offence under section 395 IPC is that the petitioner had forcibly taken away the keys of a State Transport Bus that was plying on the route at the relevant time. Being aggrieved by the addition of the offence under section 395 IPC in the impugned complaint, the petitioner has preferred the present petition.

3. At this stage, it is pertinent to note that pursuant to the filing of the impugned first information report, the petitioner and other accused persons had preferred a petition being Special Criminal Application No.10966 of 2019 under section 482 of Cr.P.C. before this Court. The said petition was dismissed by the coordinate Bench by way of an order dated 15.01.2020.

4. Mr. Rahul Sharma, learned advocate for the petitioner, submitted that the main object of the proposed public gathering was to commemorate the death anniversary of two freedom

fighters and to stage a protest against the Citizenship Amendment Act, 2019. It was submitted that if the allegations made in the impugned complaint are taken at its face value, at the most, the petitioner could be held liable for blocking the public road as a part of the peaceful protest and therefore, it cannot be said that the petitioner had the intention to drive away the Government bus. It was contended that it was under the third supplementary charge-sheet that the petitioner along with other offences came to be charged for the alleged offences. While drawing attention of the Court to the charge-sheet papers, learned advocate pointed out that no where it has been alleged that the keys of the State Transport bus were taken away with the intention to commit theft of the keys.

4.1 Mr. Sharma, learned advocate for the applicant, laid emphasis on the words “for that end” as appearing in the definition of Robbery in section-390 of IPC to submit that in this case, no property has been carried away or has been attempted to be carried away by way of theft and no injury or death has been caused to any person by the petitioner during that process.

4.2 In support of such submission, learned advocate Mr. Sharma placed reliance upon the decision of the Apex Court in the case of **Venu @ Venugopal and others v. State of Karnataka** reported in **(2008) 3 SCC 94**, wherein it has been held that theft or extortion when caused with violence or fear of death, hurt or wrongful restraint is robbery and that when no theft is committed, then as a natural corollary, there cannot be robbery. It was further held therein that robbery is only an aggravated form of offence of theft or extortion and that violence

must be in the course of theft and not subsequently. It is also necessary that violence should actually be committed and that even an attempt to commit it is enough.

4.3 Reliance was also placed on a decision rendered by a single Judge of this Court in the case of **Viralbhai Becharbhai Vaghani v. State of Gujarat and others** reported in **2016 SCC Online Guj 2213** wherein similar principle has been laid down in the context of invocation of the provision of section 394 of IPC. Learned advocate for the applicant, accordingly, urged that the invocation of section 395 in the present case is illegal and hence, the same deserves to be quashed and set aside.

5. Mr. Mitesh Amin, learned Public Prosecutor, drew attention of the Court to the order passed in Special Criminal Application No.10966 of 2019 to submit that the petitioner herein was one of the applicants in the said petition and that, having exhausted the remedy under section 482 of Cr.P.C, it is now not open to the petitioner to file the present petition. It was submitted that on rejection of the earlier petition being Special Criminal Application No.10966 of 2019 at the admission stage, there remains very little scope for re-appreciation of the facts on record as the Court under section 482 of Cr.P.C. has very limited scope to examine the evidence. It was, accordingly, urged that the present petition is not maintainable. It was further urged that charge-sheet has been filed but charge is yet to be framed. The petitioner could agitate his case against the invocation of section 395 IPC at the time of framing of charge.

5.1 Mr. Amin, learned Public Prosecutor, submitted that

though permission to conduct the meeting had been revoked, a large crowd had gathered at the place and within moments, the crowd had turned violent. It was submitted that the applicant was involved in the activity of vandalizing public property, including police vehicles. The mob caused severe damage to Government vehicles and had also attempted to topple the vehicles. When the police attempted to stop the vandalism, they resisted them, during which process, some of the police personnel had sustained injuries. It was further submitted that a State Transport Bus, which was passing through the place, was made to stop and thereafter, the applicant entered the said bus and stole the keys so that the Bus does not proceed further. It was contented that the said act of the applicant amounted to an offence under section 395 IPC as it was a voluntary act of wrongful restraint by the applicant whereby, the applicant had prevented the driver of the State Transport Bus from proceeding further to its destined route. It was, therefore, submitted that the offence under section 395 of IPC has rightly been invoked in the present case.

6. Heard learned advocates on both the sides and perused the documents on record. Before advertng to the merits of the case, the issue regarding maintainability of the present petition has to be decided first. For this purpose, a glance to the main relief claimed in the earlier petition being Special Criminal Application No.10966 of 2019, which has been reproduced in the order dated 15.01.2020 passed by the coordinate Bench while disposing of the petition, would be beneficial;

“7(B) Issue a writ of mandamus or any other writ, order or direction to quash and set aside the impugned FIR

registered vide C.R. No.I-74 of 2019 of Chhapi Police Station, District Banaskantha u/s.143, 147, 149, 308, 152, 153, 120B, 336, 353, 427, 506(2), 341 and 395 of IPC and u/s.3 of the Prevention of Damage to Public Properties Act, 1984.”

6.1 While disposing of the said petition vide order dated 15.01.2020, the coordinate Bench has made the following observations in paragraph-3 of the order;

“3. ....Since the investigation of impugned FIR is at very initial stage and as stated by learned PP Mr. Mitesh Amin that photographs and videography of scene of offence is under analysis before FSL, but it is a matter of fact that it is the specific case of State that the petitioners were brought at the scene of offence at the instance of the mob on account of earlier permission which was granted and later on cancelled. So at this stage, the Court is not inclined to scrutinize minute details of occurrence right from detention to release of the petitioners and subsequent events which took place on 19.12.2019. Thus, investigation of serious offence is underway. At this stage, the petitioners have not made out a case under section 482 of the Code of Criminal Procedure to quash the FIR, since the petitioners are prima facie found to be involved in the offence and they were very much present at the time of occurrence of scene of offence alleged in the FIR. The present petition being devoid of merits is hereby rejected at admission stage.”

6.2 It is true that the coordinate Bench of this Court has not gone into the minute details of the occurrence of events right from the detention to the release of the petitioner as also the subsequent events that took place on 19.12.2019. The petitioner could have agitated the issue of indictment of section 395 IPC in the earlier proceedings. However, for reasons best known to the petitioner, the said point was never agitated in the earlier proceedings otherwise the same would have found mention in

the order passed by the learned single Judge. Having not agitated the indictment of section 395 IPC in the earlier proceedings, it is now not open to the petitioner to agitate the same by way of the present proceedings. The contents in the first information report could not be agitated in piecemeal. The accused could not plead that an offence under a particular section in the first information report was not pleaded at the initial stage and that he may be afforded opportunity to plead again. Such permission could never be granted and hence, in my opinion, the present petition seeking quashment of a particular section in the form of section 395 of IPC is not maintainable.

7. Still, however, it is necessary to understand the law in the context of section 395 of IPC. A copy of the supplementary charge-sheet filed against the petitioner has been produced on record, wherein the role played by the petitioner has been narrated in clear terms. The main allegation against the petitioner herein is of forcefully taking away the keys of the State Transport Bus and thereafter, wrongfully restraining the driver of the Bus from proceeding to its destination and in that process, the driver of the Bus had been threatened for life.

8. At this juncture, it would be relevant to refer to the definition of "Theft", as provided in section 378 of IPC. It provides that "whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft". In the present case, as per the averments made in the impugned complaint, the petitioner had wrongfully restrained the driver of the State Transport Bus from proceeding



to its destination. The term “wrongful restraint” has been defined in section 339 IPC to mean - “whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person”. On consideration of the allegations made in the impugned complaint on its face value, it appears that the petitioner herein had wrongfully restrained the driver of the State Transport Bus with the intention to prevent the Bus from proceeding further to its destination.

9. In the case of *Venu v. State of Karnataka (supra)* relied upon by learned advocate Mr. Sharma, the Apex Court has observed thus:

“12. The words “for that end” in section 390 clearly mean that the hurt caused must be with the object of facilitating the committing of the theft or must be caused while the offender is committing theft or is carrying away or is attempting to carry away property obtained by the theft.”

9.1 It appears from the record that during the course of committing theft of the keys of the State Transport Bus, the petitioner had placed the driver of the said Bus under the fear of instant death. In that process, the petitioner had also restrained the driver of the said Bus from proceeding to its destination. Where there are more than five persons who had conjointly attempted to commit robbery, the offence would be termed as “dacoity”. Here, as per the charge-sheet, about 3000 persons had gathered at the place. Even in the earlier order passed in Special Criminal Application No.10966 of 2019 dated 15.01.2020, while

dismissing the submission made on behalf of the original accused that their presence at the scene of offence at around 10:00 am is unbelievable as they had been detained at 08:45 pm, the coordinate Bench has observed that due to the insistence of the mob that had gathered at the meeting place, the original accused (petitioners therein) were released and were brought at the scene of offence since the mob had started to damage public property and were pelting stones at passenger buses. Such facts are also reflected in the impugned complaint. The coordinate Bench also recorded that at that time two of the accused, original petitioners in that writ petition, addressed the gathered and uttered slogans despite the fact that permission had been cancelled, which fact was well within the knowledge of the accused persons. Thus, the presence of the accused at the scene of incident becomes evident.

10. In a catena of judgments laid down both by the Apex Court as also by this Court, the inherent powers of the High Court under section 482 Cr.P.C. have been discussed. In the case of **Inder Mohan Goswami v. State of Uttranchal and others reported in 2007(12) SCC 1**, the Apex Court has elaborately discussed about the inherent powers of the High Courts under section 482 of Cr.P.C. It is well settled that the inherent powers under section 482 Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in the section itself. The authority of the Court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the Court, then the Court would be justified in preventing injustice by invoking inherent

powers in absence of specific provisions in the Statute.

11. Considering the facts and circumstances of the case and the law on the subject, this Court does not deem this to be a fit case wherein the inherent powers under section 482 Cr.P.C could be exercised in favour of the petitioner. In the result, the petition is dismissed. Rule is discharged.

F.S. KAZI

(GITA GOPI,J)

