

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/MISC. CIVIL APPLICATION NO. 567 of 2022**

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Versus
JAYDEEPSINH K RATHOD

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Appearance:
MR DARSHAN P. DAVE for MR N P PANDYA(11241) for the Applicant(s)
No. 1

MS SHRUTI PATHAK ASSISTANT GOVERNMENT PLEADER for the
Opponent(s) No. 1

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**CORAM: HONOURABLE THE CHIEF JUSTICE MR. JUSTICE ARAVIND KUMAR
and
HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI**

Date : 13/09/2022

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI)

1. By way of this application under Section 12 of the Contempt of Courts Act, 1971 (hereafter referred to as the "Act"), the applicant has approached this Court for seeking the following reliefs :-

"18(A) This Hon'ble Court may kindly be pleased to allow this petition;

(B) This Hon'ble Court may kindly be pleased to punish the respondent u/s. 12 of the Contempt of Courts Act, 1971;

(C) This Hon'ble Court may kindly be pleased to direct the respondent to comply with directions of the order dated

12.11.2013 passed by the Hon'ble Apex Court in the case of Lalita Kumar vs. Govt. of U.P., in Writ Petition (Criminal) No. 68 of 2008 with S.L.P. (Cri.) Nos. 5986 of 2006 and 5200 of 2009 with Criminal Appeal Nos. 1410 of 2009 and 1267 of 2007 and Contempt Petition (C) No. D26722 of 2008 and further be pleased to direct the respondent to lodge the FIR forthwith pursuant to the complaint dated 26.05.2022'

(D) This Hon'ble Court may kindly be pleased to grant such other and further relief and/or order in the interest of justice in favour of the petitioner."

2. The grievance of the applicant is that she was knowing the respondent accused for a period of about seven months and had mortgaged her gold ring and two nose rings (nathani) and borrowed an amount of Rs.14,000/- (Rupees Fourteen Thousand Only) from the original accused and it was conveyed that the said borrowing was made in such a manner that the father of the applicant may not have the knowledge and for this purpose, no name is given in the bill. The said amount was promised to be paid back within a period of two months by the applicant, but could not repay. Resultantly, the respondent accused was making some immoral demands which the applicant has requested not to make. It is the case of the applicant that later on, the accused started sending some messages on WhatsApp

and tried to blackmail and thereby inclined to establish physical relations and was threatened by the accused that he would inform her father about the mortgage of such jewellery.

2.1. These attempts have been made by the respondent accused repeatedly, but she has assured to wait for some time so that she can repay the entire amount, but then the accused started pressurizing the applicant to pay the said amount immediately and when the applicant stopped answering the phone calls, the nephew of the accused started following the applicant and on one day, the applicant was intercepted in the way, compelled to sit in the car and then brought her inside the Hotel/Guest House where no identity card or anything was demanded and then the accused misbehaved and raped the applicant. It was conveyed that some photographs have been taken by the accused of the applicant and by blackmailing for about five times, she was taken to the Guest House and threatened. There were injuries caused to the applicant by the accused, but on account of fear and reputation and she being female, did not lodge any complaint about such act being done

upon her.

2.2. It is further the case of the applicant that later on, the said harassment continued, as a result of this, at last, the applicant has clearly informed the accused on 21/22.04.2022 not to make any phone calls else, the applicant will file a complaint against the accused. The accused was not afraid of such thing and in turn, threatened the applicant to wait and to see how he will trap the applicant in a false case. The applicant was scared of such counter threat of involving her in a false case, but then, phone calls by the accused were stopped and nothing happened. Thereafter suddenly on 27.04.2022 in the evening at around 07:15 pm, certain police personnel came in the civil dress at the residence of the applicant to whom neither the applicant nor her family members were knowing the names since they were not even in police uniform and asked the applicant to board in the private vehicle. According to the applicant, this private vehicle was of the accused and on instructions of the Police Inspector, Naroda Police Station, the policemen in civil dress came. On account of such incident, the father and the applicant asked the

policemen what happened, but then though they were not in police uniform, there was no any arrest memo, still compelled the applicant to sit in the private vehicle and took her. At that juncture, the applicant informed the Police Inspector, Naroda Police Station, that in fact this accused committed rape on her and she is inclined to file a complaint for rape, but in spite of this being specifically conveyed, the police did not listen the applicant or her family and not taken the complaint. As a result of this, the father of the applicant called the control room at number 100 upon which PCR van of the police came, but again the same returned back on account of some instructions of Inspector Mr. Niraj Patel.

2.3. It is further the case of the applicant that on 27.04.2022 in the night the accused came before the applicant and started demanding illegal funds and at that juncture, the applicant has conveyed the episode and shown the injuries of bites and other injuries. But the police personnel did not pay any attention nor recorded the complaint of the applicant and instead allowed the accused to threaten the applicant in the presence of Police

Inspector who was also using unparliamentary language. Thereafter on the next date i.e. on 28.04.2022, Police Inspector, Niraj Patel made phone calls to the Media persons, who conducted media trial and the said Police Inspector conveyed the applicant which is narrated in paragraph 2.12. in the application .

2.4. It is further the case of the applicant that, in the meantime on 27.04.2022, in the night at 11:55 hours, the respondent registered a complaint against the applicant being FIR No. 11191035220488 dated 28.04.2022 and charges which have been levelled are the offences punishable under Sections 384, 388, 389, 120(b) and 506(1) of the Indian Penal Code and under Sections 66(c) and 66(d) of the Income Tax Act and based upon that took away the applicant for corona test and kept for about three hours for the said test.

2.5. It is the grievance of the applicant that Police Inspector Niraj Patel did not produce the applicant report before the District Magistrate within 24 hours and at about 1200 hours on

28.04.2022 in the afternoon, arrest memo of applicant was prepared though the applicant was in custody since 7:15 pm in the evening of 27.04.2022. It is further the case of the applicant that on 28.04.2022 in the evening at around 0600 hours, the father of the applicant made an application before the Chief Judicial Magistrate, Ahmedabad under Section 97 of the Code of Criminal Procedure, wherein the Chief Judicial Magistrate, had sent notice on WhatsApp at about 6:30 to the Police Inspector, Naroda Police Station and directed to produce the applicant on the following day i.e. in the afternoon at about 1200 hours. Upon receipt of the said notice, the Police Inspector took the applicant to Civil Hospital though she was not in need of any treatment and informed to get pregnancy test of the applicant done and later on, she was compelled to remain in hospital for whole night. In the morning at about 10:00 hours, sonography test of the applicant was undertaken without her consent, though she had already conveyed to the Police Inspector that she is not pregnant at all, but in spite of that, forcibly such test was undertaken.

2.6. It is further the case of the applicant that on 29.04.2022 in the afternoon at about 12:00 pm., the police came along with the applicant and other co-accused, produced them, but did not produce the applicant and therefore, the Chief Judicial Magistrate had admonished the police and directed to produce the applicant by 3:00 pm. The remand for five days of the applicant was sought for by the Police which application came to be rejected by the Chief Judicial Magistrate and ordered to send the applicant to judicial custody. Later on, the applicant was taken to the judicial custody. In the meantime, policemen were threatening the applicant that “you have made rivalry with the police, now PI will not spare you, you just watch, he would trap you in one or the other case” and on the following day, the Chief Judicial Magistrate, granted bail to the applicant under Section 437(1) of the Criminal Procedure Code. Simultaneously an application under Section 97 of the Code of Criminal Procedure was also filed for seeking search warrant of the applicant by her father. Despite aforesaid facts though within specific knowledge, Police Inspector Niraj Patel is on the contrary involving the applicant in the offence though the

accused had committed rape on the applicant and threatened to kill. On account of such distress circumstances, when nobody came to rescue at about 7:30 in the evening the applicant had consumed phenyl on 03.05.2022 and attempted to commit suicide. But, somebody made a phone call on 108 and called the ambulance and took her to Civil Hospital from there on account of critical situation, was referred to Gandhinagar Civil Hospital.

2.7. It is further the case of the applicant that subsequently in the midnight at about 2:00 am, Bahiy Police Outpost, Policeman came and recorded the statement of the applicant and at 3:00 am the Mamlatdar came and recorded the statement of the applicant and later on thereafter on 05.05.2022 at about 4:00 am. Dehgam Police Staff also came and recorded the statement. In this period, right from 05.05.2022 till date, the Police Inspector, i.e. Jaydeepsingh K. Rathod, Dehgam Police Station, respondent herein had chosen not to record any complaint of the applicant nor took any steps and are out and out to protect the Police Inspector Niraj Patel of Naroda Police Station. By elaborating such assertion, a grievance is raised that though

there are clear directions issued by Hon'ble Apex Court in the case of ***Lalita Kumari v. State of U.P.*** reported in **(2012) 4 SCC 1**, still the respondent herein, i.e. Police Inspector, Dehgam Police Station had chosen not to register complaint of rape on the applicant and shielded, Police Officer as named. On account of this, the father of the applicant had to file a written complaint before the District Superintendent of Police, Gandhinagar on 26.05.2022, but no actions were taken and as such this is a clear willful disobedience of the directions issued by the Hon'ble Supreme Court in the case of *Lalita Kumari (supra)* as stated herein-above and hence, by narrating and relying upon the said observations and the directions, the applicant has approached this Court for the reliefs sought in the application as narrated above.

3. On the basis of the aforesaid circumstances which are stated and the chronology of events, on 15.07.2022, Ms. Shruti Pathak, learned Assistant Government Pleader has made available the relevant papers and brief chronology of events, which are placed before us. In response to this, the Police

Inspector, Dehgam Police Station, has filed an affidavit-in-reply along with certain documents, which affidavit is taken on record reflecting on page 153. In addition to it, learned Assistant Government Pleader has produced certain relevant documents about the statements, papers relating to medical examination, WhatsApp chats along with some photograph and made an attempt to assist the Court.

3.1. With the aforesaid background, we took up the hearing, in which, Mr. N.P Pandya, learned advocate appeared for the applicant and after referring to relevant documents has vehemently contended that this is a gross contempt committed by the respondent with the connivance of some police personnel and it is utter violation of the directions issued by the Hon'ble Apex Court in the case of *Lalita Kumari (supra)*. It is submitted that though the applicant being female has been harassed (in the manner in which it has been stated), itself is sufficient enough to initiate appropriate steps forthwith against the responsible persons and has further submitted that looking to the audacity of the Police Officer that though there are specific

allegations made though persistently, a request which was made to lodge a complaint, the officers concerned have not registered the case. In fact, by drawing attention to some of the directions issued by Hon'ble Apex Court in the case of *Lalita Kumari (supra)*, it has been contended that registration of FIR is mandatory if the information discloses commission of cognizable offence and no preliminary inquiry is permissible in such a situation. By referring to one of the directions contained in clause (iv) a contention is raised that no Police Officer can avoid his duty of registering offence, if cognizable offence is disclosed. Action must be taken against the erring officers who did not register the FIR, when information received by him discloses a cognizable offence. These directions which are mandatory in nature have to be observed by the officer concerned and as such, appropriate steps are required to be taken by granting relief as prayed for in the application.

3.1. Mr. Pandya, learned advocate appearing for the applicant has further contended that the narration and sequence of events, is an act alarming and if such kind of officers are not to

be dealt with strictly then no person will be safe in the society and that being the position, a request is made to consider and grant the relief with immediate effect. It is very unfortunate that despite such serious episode which took place with the applicant, even representations were also not promptly dealt with. This eyewash which has been given to the grievance of the applicant is a serious act and as such, appropriate steps are required to be taken against the erring officers including the respondent herein, hence, requested to consider and grant the relief as prayed for in the petition. No other submissions have been made.

4. As against this, Ms. Shruti Pathak, learned Assistant Government Pleader has vehemently contended that the applicant has created a false and fabricated story with an intention to achieve some oblique motive and as such, no such attempt be encouraged. By referring to certain documents in the form of xerox copy, it has been contended that this is a gross case of honey trap, in which, the officers are tried to be pressurized by the applicant. In fact, when the grievance was

voiced out a detailed inquiry has been conducted and the report has also been submitted by Jaydeepsinh K. Rathod, Police Inspector, Dehgam Police Station on 09.06.2022.

4.1. Learned Assistant Government Pleader has further contended that the main grievance voiced out by the applicant is that the respondent has failed to lodge FIR pursuant to her grievance of 26.05.2022 made before the Superintendent of Police, Gandhinagar, as no steps have been taken and further contended that though there are specific allegations *prima facie* made out against the Police Inspector of Naroda Police Station, he was not joined as a party in the present proceedings and as such, on the basis of bald assertion, no action be initiated in the interest of justice. It has further been contended that so far as the compliant dated 02.05.2022 is concerned, the entire alleged incident took place within the jurisdiction of the Naroda Police Station, whereas, J.K. Rathod - deponent of this affidavit was serving as a Police Inspector, in-charge of Dehgam Police Station. On the contrary, when unfortunate incident of consuming phenyl by the applicant at her residence took place

on 03.05.2022 at about 7:30 pm the jurisdictional Police Inspector has taken some effective steps at his end and by narrating in paragraph 5, the sequence of steps which have been taken, learned Assistant Government Pleader has submitted that he is not a person responsible for either inaction or dereliction of any duty. In fact, on account of the fact that offence has not taken place within the jurisdiction of Dehgam Police Station, the deponent could not carry any preliminary inquiry or register any offence at Dehgam Police Station since it relates to commission of crime within the jurisdiction of Naroda Police Station, Ahmedabad.

4.2. In fact, by inviting attention to the averments contained in the affidavit-in-reply though the father of the applicant has preferred another complaint on 26.05.2022, making similar allegations that of earlier complaint dated 02.05.2022 given to Police Commissioner, Ahmedabad and the said two complaints i.e. 02.05.2022 as well as 26.05.2022 are almost identical and with similar allegations. However, for the first time, in this complaint, allegations are made against the deponent alleging

that the deponent failed to register FIR. On the contrary, after due preliminary inquiry, the said complaint was disposed of and an intimation about the same has also been given to the father of the applicant on 09.06.2022 which is suppressed from the Court. There is neither any willful disobedience nor any violation of the directions contained in the decision delivered by the Hon'ble Apex Court. By reiterating that the alleged incident has taken place not within the territorial jurisdiction of the deponent of affidavit-in-reply and hence, there is hardly any reason for raising any grievance against the deponent who is in-charge of Dehgam Police Station. In fact, pursuant to the grievance/complaint of the applicant dated 02.05.2022, a substantive FIR has already been registered on 01.08.2022 being FIR No. 11191035220836 of 2022 and the same was registered with Naroda Police Station against accused persons namely, Jagdishbhai Prajapati, Niraj Patel, Police Inspector of Naroda Police Station and as such, this being the situation, proceedings initiated by the applicant in view of this subsequent development may be dropped in the interest of justice. By referring to some of the paragraphs from the report filed by Mr.

Jaydeepsinh K. Rathod, Police Inspector, Dehgam Police Station, it has been submitted that a serious attempt has been made by trapping in the affair and thereby, took away the amount of Rs.9,55,000/- from different places and later on a conflict arose. On the contrary, report found to be other way round from what has been asserted by the applicant and, therefore, learned Assistant Government Pleader has submitted that now since substantive FIR has already been lodged on 01.08.2022 as stated, the law will take care of the grievance of the complainant by taking appropriate steps and therefore, this Court may kindly drop the present proceedings.

4.3. Even from the WhatsApp chats which are already recorded, it reveal that what has been narrated by the applicant is not a gospel truth. On the contrary, appropriate steps in accordance with law has already been taken. Hence, now, since even Police Officer in-charge of Naroda Police Station is also booked including the other accused person, appropriate steps will be taken in accordance with law. This being the situation, the present proceedings may be dropped.

5. Having heard the learned advocates appearing for the parties and having gone through the material placed before the Court and in view of the submissions made by both the sides, the Court see some circumstances which are not possible to be unnoticed.

5.1. At the outset as can be seen from the record which has been placed before us, the applicant along with her friends Mr. Sabajhusen Ikbalbhai Sipai and Ikramali Barakali Saiyed who have been a part to extort money from the respondent herein and upon such inquiry having been made, even the Police Inspector in-charge of Dehgam Police Station also forwarded a report to Deputy Superintendent of Police, Gandhinagar Division, Gandhinagar. The said report which is attached to the affidavit-in-reply an assertion is reflecting that the applicant has trapped respondent who happened to be the owner of Urvi Jewellers, and excavated money to the extent of Rs.9,55,000/- intermittently and on account of such conduct of the applicant, the said owner was constrained to file a compliant bearing FIR No. 11191035220488 of 2022 for the offences punishable under Sections 382, 388, 389, 120B, 506(1) of the Indian Penal Code

and also under Sections 66(e) (a) of the Income Tax Act. In that connection the applicant had been dealt with.

5.1.1. The record further indicates that after the process of inquiry into the allegations and grievance raised by the applicant, it was found that to some extent the respondent as well as Police Officer are also responsible and *prima facie* having found a substantive complaint has been lodged on 01.08.2022 before Naroda Police Station being FIR No. 11191035000836 and the said complaint was filed not only against the respondent, but also against the Police Officer Mr. Niraj Patel, who was incharge of Naroda Police Station and one another co-accused and as such, it appears that the grievance of the applicant is taken care of by initiating steps by filing substantive complaint and as such, the applicant has not remained remediless.

5.2. *Insofar* as the grievance with regard to non compliance of the directions issued by Hon'ble Apex Court in the case of *Lalita Kumari (supra)*, no doubt the authority appears to have delayed, but upon due preliminary process, when it has appeared that

substantive complaint deserves to be filed against the erring officials for the alleged incident said to have taken place on 27.04.2022 steps have been already initiated and as such, when the said complaint now which is registered already, the grievance is taken care of and it has been assured that further process will be taken in accordance with law. At this juncture, it also appears from the record that as per the version of the applicant and her father, the applicant was taken to the guesthouse for about five times and the alleged act had been committed, but for a pretty long period, a conspicuous silence on the part of the father as well as the applicant is a matter to be examined by the appropriate authority. On the basis of such conduct, it is difficult for this Court to arrive at a conclusion that whatever stated by the applicant is absolutely correct. No normal person if so aggrieved would wait for a pretty long period and further fact is also noticed that the applicant with the connivance of other friends has tried to frame the respondent and thereby excavated the money. WhatsApp chats also being now part of the record, we are not inclined to initiate any contempt proceedings, especially when this conduct of the

applicant a story put-forth before the authority and the Court are seriously in conflict which requires a detailed adjudication of the facts.

5.3. Yet another circumstance is also not possible to be ignored is that when the applicant was brought before the learned Magistrate, it was informed by herself that the Police has not assaulted her. It is only conveyed that she wanted to file a complaint with regard to rape committed by accused no. 1 which Police did not and as such, now since substantive complaint has already been lodged as indicated above, the said aspect and the grievance also will be taken care of to put the same to its logical end in accordance with law.

5.4. Further, the documents which are placed before the Court with remarks submitted to the learned Assistant Government Pleader by Police Inspector, Dehgam Police Station, and found that with connivance of two other male members who happened to be friends of the applicant a serious attempt of blackmailing is made. Violation of any of the guidelines under such circumstances will also be a matter of inquiry which will be

undertaken during the course of time in the proceedings filed in the form of complaint. But this grievance is a seriously disputed question of facts which is not within the realm of the contempt jurisdiction, especially when no definite conclusion is possible to be arrived at. In fact, the statements before the jurisdictional Magistrate which were to be recorded, it has been noticed that the applicant did not raise any grievance with regard to the injuries which are stated to have been caused by the accused person nor any grievance against Police. In fact, on the basis of the material on record, a specific stand has been taken in the reply affidavit that a complaint dated 02.05.2022 was lodged for the very same incident which was addressed to the Police Commissioner, but then upon preliminary investigation, the said complaint has been disposed of and an intimation thereof was already given to the father of the applicant on 09.06.2022. This fact has been suppressed. The alleged incident had taken place was within the territorial jurisdiction of Naroda Police Station whereas for the reasons best known to the applicant, Police Inspector, Naroda Police Station has not been joined as a party respondent in the cause title of the present application

and as such, the conduct of the applicant is not inspiring any confidence on the basis of which a definite stand can be accepted. In fact, for the first time, after the disposal of the complaint, a similar complaint is lodged and for the first time alleged that the deponent has failed to register FIR though Dehgam Police Station was not a relevant Police Station where no such actual offence has taken place. There is hardly any reason for this Court to initiate any steps against such officer in-charge of Dehgam Police Station. In fact, a detailed report is forwarded along with affidavit-in-reply and perusal of the same would be sufficient enough to indicate that since main complaint is now already lodged, grievance raised would be examined before the fact finding forum and as such, we are of the opinion that the contempt proceedings for the aforesaid reasons are not possible to be initiated especially when the facts are seriously in dispute.

5.5. Further during the course of said process, when the applicant was dealt with in connection with the complaint which has been lodged, she was medically examined and certificate dated 30.04.2022 issued by the Medical Officer, Medico Legal

Board, Civil Hospital, Ahmedabad, reflects no external marks of injuries nor stains on body. Further the photograph which has been attached is not indicating whether it is of the applicant or at which time, the said photograph was taken. So there is a clear conflict between the photograph and the injury certificate issued by the competent officer of the Government Hospital.

5.6. Yet another circumstance which also is not possible to be ignored by us is that when the applicant was taken for medical examination on 28.04.2022, she herself has given specific consent for such medical examination and it is only after her consent, it appears that examination has been undertaken. The said examination also reveals that what has been conveyed by the applicant in the present proceedings, needs a detailed examination of the facts and as such, under this peculiar background of fact, we are constrained not to exercise our contempt jurisdiction.

5.7. Yet another circumstance which also does not inspire confidence is WhatsApp chats which had taken place between the applicant and accused no.1 and her known male friends.

The said few WhatsApp chats which have been brought to our notice would also sufficient enough to indicate that it is not safe to initiate stringent steps under the provisions of the Contempt of Courts Act. The bunch of transcripts of WhatsApp chats has been placed before us after flapping at appropriate places by the learned Assistant Government Pleader and perusal thereof would indicate that there is some nexus of the applicant with other persons, who in connivance of each other excavated some amount from the accused person. Since this Court is not a fact finding authority, we refrain ourselves from quoting hereunder such WhatsApp chats, but perusal thereof, would clearly indicate that not only the grievance of the applicant may be examined by the appropriate forum, but the stand of the respondent also needs a detailed adjudication. It is a trite law that contempt jurisdiction is a quasi criminal jurisdiction in nature, standard of proof requires in this proceedings should be beyond reasonable doubt.

6. It is further a settled position of law that while dealing with the contempt petition, the Court is not expected to conduct a roving inquiry and the said principle would apply with same

vigor when disputed questions of fact are involved and as such, when two views are possible, such disputed version would be normally outside the realm of contempt jurisdiction and as such looking to the facts on hand, in the context of the directions which are issued by the Hon'ble Apex Court, we are of the opinion that no satisfactory case is made out by the applicant which may persuade us to initiate contempt proceedings and further the applicant is not remediless. She can either file a criminal prosecution or take appropriate measures permissible under the law and one of the measure is already set in motion in the form of complaint having already been filed against the accused persons, as such we deem it proper not to exercise our jurisdiction in favour of the applicant.

7. Accordingly, since we are not inclined to entertain application, the same is dismissed hereby. While parting with the present order, we clarify that disposal of this proceedings may not deter the applicant to initiate appropriate proceedings permissible under the law and the observations contained herein-above are strictly in the context of the present contempt proceedings only.

8. With this clarification, the present contempt proceedings stands disposed of.

(ARAVIND KUMAR,CJ)

(ASHUTOSH J. SHASTRI, J)

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