CASE NO.:
Appeal (crl.) 421 of 2004

PETITIONER:
Hasanbhai Valibhai Qureshi

RESPONDENT:
State of Gujarat and Ors.

DATE OF JUDGMENT: 05/04/2004

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT.

JUDGMENT:
J U D G M E N T

(Arising out of SLP(Crl.) No. 472/2004)

ARIJIT PASAYAT,J

Leave granted.

The appellant who is the original complainant in the case relating to FIR NO. 134/2003 in the police station, Sub District, Veraval, district Junagadh calls in question legality of the judgment rendered by a learned Single Judge of the Gujarat High Court, Ahmedabad dismissing the writ petition filed by the appellant.

Main prayer in the writ petition was for issuance of appropriate writ for re-investigation by an independent agency. The prayer was made alleging that the local police had succumbed to the pressure exercised by local MLA and the investigation was not carried out in a straight forward manner. It was alleged that on 23.9.2003 around 12.30 a.m. persons belonging to a particular community carried deadly weapons and combustible materials and pursuant to the common object of an unlawful assembly caused destruction of shops belonging to persons of another community, by breaking them open and setting them ablaze. There was also large scale looting of articles. About 53 persons were arrested. Initially, in the FIR various offences including Sections 395 and 120B of the Indian Penal Code, 1860 (in short the 'IPC') and Section 135 of the Bombay Police Act were noted and mentioned by the police officials. But strangely after a few hours of the registration of the FIR wherein the aforesaid offences were mentioned, Sections 395 and 120B were deleted by the prosecuting agency and because of such deletion the accused persons managed to get bail. The prayer in the aforesaid circumstances was for investigation by an independent investigating agency. It was brought to the notice of the High Court that a bare perusal of the statements clearly indicate the applicability of those provisions and commission of such offences, contrary to what has been stated by the prosecuting agency.

The High Court noted that specific allegations were made regarding the biased approach of the police officials under the influence of local MLA. The petition was resisted on the ground that on detailed investigation it was noticed

that the offences relatable to Sections 395 and 120B IPC were not made out and, therefore, were deleted. Such a course is permissible in law. The High Court was of the view that if further investigation is necessary the remedy is available in the Code of Criminal Procedure, 1973 (in short the 'Code') and further investigation can be carried out under the supervision of the trial Court. Moreover, it was held the police was not the ultimate authority who can decide as to which sections are applicable. Appropriate steps can be taken by the complainant along with the prosecuting agency before the trial Court. Since such remedy was available under the Code, the petition under Article 226 of the Constitution of India, 1950 (in short the 'Constitution') was not entertained.

In support of the appeal, learned counsel for the appellant submitted that the role of the prosecuting agency from the beginning is tainted with suspicion and visible leaning in favour of the accused persons. There was no urgency to seek deletion of Sections 395 and 120B IPC without full and complete investigation. It cannot be left to the ipse dixit of the investigating officer. That the complainant could approach the trial Court is no reason to gloss over partisan approach and attitude of the prosecuting agency, which was obliged to act independently and ensure that the guilty are brought before Court for appropriate offences though it is for the Court ultimately to find whether they are guilty or not. The High Court has failed to notice that the prosecuting agency was showing unusual interest in protecting the accused persons and, therefore, the scope of the complainant moving the trial Court along with the prosecuting agency is a remote possibility. The prosecuting agency in the circumstances cannot expected to be reasonable or co-operate, fairly and just in order to effectively enforce and maintain law and order.

The respondents supported the judgment of the High Court stating that no infirmity exists in the view taken by the High Court to warrant interference.

By order dated 19.3.2004 direction was given to the Director General of Police, Gujarat to submit a report as to whether the action taken by the investigating officer was proper and whether there was need for further investigation. In the report submitted by the Director General of Police, it has been fairly accepted that the deletion of Section 120B IPC does not appear to be proper. In any event the Court of Additional Sessions Judge of the 10th Fast-track Court at Veraval has framed charge in Sessions Case No.64/2003 on 22.3.2004 against three of the accused persons under Section 120B IPC. It has been stated that though retention of Section 120B IPC was desirable, but nothing more is required to be done in view of the fact that the Sessions Judge has already framed charge under the section. It has been stated that there were few lapses in investigation and inquiry is being caused against the investigation officer with a view to initiate suitable departmental action. So far as the desirability of further investigation is concerned, it is stated that the case has been fixed for day-to-day hearing from 5.4.2004 to 15.4.2004 and if further investigation is done, it would prove infructuous and would only delay process of trial unnecessarily.

Section 228 of the Code in Chapter XVII and Section 240

in Chapter XIX deal with framing of the charge during trial before a Court of Sessions and trial of Warrant -cases by Magistrates respectively. There is a scope of alteration of the charge during trial on the basis of materials brought on record. Section 216 of the Code appearing in Chapter XVII clearly stipulates that any court may alter or add to any charge at any time before judgment is pronounced. Whenever such alteration or addition is made the same is to be read out and informed to the accused.

In Kantilal Chandulal Mehta v. State of Maharashtra (AIR 1970 SC 359) it was held that the Code gives ample power to the Courts to alter or amend a charge whether by the Trial Court or by the Appellate Court provided that the accused has not to face a charge for a new offence or is not prejudiced either by keeping him in the dark about the charge or in not giving him a full opportunity of meeting it and putting forward any defence open to him on the charge finally preferred against him. Section 217 deals with recall, if necessary of witnesses when the charge is altered.

Therefore, if during trial the trial Court on a consideration of broad probabilities of the case based upon total effect of the evidence and documents produced is satisfied that any addition or alteration of the charge is necessary, it is free to do so, and there can be no legal bar to appropriately act as the exigencies of the case warrant or necessitate.

Coming to the question whether a further investigation is warranted, the hands of the investigating agency or the Court should not be tied down on the ground that further investigation may delay the trial, as the ultimate object is to arrive at the truth.

Sub-section (8) of Section 173 of the Code permits further investigation, and even dehors any direction from the Court as such, it is open to the police to conduct proper investigation, even after the Court took cognizance of any offence on the strength of a police report earlier submitted. All the more so, if as in this case, the Head of the Police Department also was not satisfied of the propriety or the manner and nature of investigation already conducted.

In Om Prakash Narang and Anr. v State (Delhi Admn.) (AIR 1979 SC 1791) it was observed by this Court that further investigation is not altogether ruled out merely because cognizance has been taken by the Court. When defective investigation comes to light during course of trial, it may be cured by further investigation if circumstances so permitted. It would ordinarily be desirable and all the more so in this case, that police should inform the Court and seek formal permission to make further investigation when fresh facts come to light instead of being silent over the matter keeping in view only the need for an early trial since an effective trial for real or actual offences found during course of proper investigation is as much relevant, desirable and necessary as an expeditious disposal of the mater by the Courts. In view of the aforesaid position in law if there is necessity for further investigation the same can certainly be done as prescribed by law. The mere fact that there may be further delay in concluding the trial should not stand on the way of

further investigation if that would help the Court in arriving at the truth and do real and substantial as well as effective justice. We make it clear that we have not expressed any final opinion on the merits of the case.

The appeal is accordingly finally disposed of, on the above terms.