

**(2008) 16 Supreme Court Cases 497 : (2010) 4 Supreme Court Cases (Cri) 315 : 2003 SCC OnLine SC 834**

*(Record of Proceedings)*

(BEFORE V.N. KHARE, C.J. AND S.B. SINHA AND ARUN KUMAR, JJ.)

NATIONAL HUMAN RIGHTS COMMISSION . . Petitioner;

*Versus*

STATE OF GUJARAT AND OTHERS . . Respondents.

SLP (Crl.) No. 3353 of 2003<sup>±</sup> with Crl. MP No. 6797 of 2003, TPs (Crl.) Nos. 194-202 of 2003, decided on August 8, 2003

**A. Constitution of India — Art. 136 — Maintainability — Alternative remedy/Exhaustion of remedies — SLP seeking to impugn a Sessions**



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Court's judgment pending adjudication in criminal appeal in High Court — Maintainability — SLP raising issues of rights of fair trial, rights of victims of crime, defective investigation and failure of criminal justice delivery system in the State of Gujarat — Effect — On facts, admission of SLP deferred — Held, unless the grounds of criminal appeal in High Court are perused no effective order in SLP can be passed

**(Para 3)**

**B. Constitution of India — Art. 21 — Human Rights — Arts. 21, 14 and 32 — PIL to enforce human rights of victims and witnesses — Reasonable and fair trial — Scope and ambit — Rights of victim and protection to witnesses, held, are contained within the meaning of reasonable and fair trial — Human and Civil Rights — International Covenant on Civil and Political Rights, 1966 — Art. 14 — European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, Art. 6**

**(Paras 7 and 5)**

**C. Constitution of India — Art. 136 — Interim directions — SLP to enforce human rights of the victims and witnesses — Directions to State of Gujarat — State directed to provide full and complete protection to the witnesses, their families and their relations, in the specified cases — State also issued notice to show steps taken to protect victims and witnesses of specified cases, steps taken to take action against persons extending threat and coercion to change statements of witnesses and to produce copy of criminal appeal in *Best Bakery case* — Constitution of India — Arts. 21, 14 and 32 — PIL to enforce human rights of the victims and witnesses — Human and Civil Rights**

**(Paras 11 and 9)**

**D. Constitution of India — Art. 136 — Interim directions — Directions to Central Government — Central Government issued notice to explain steps taken to enforce Malimath Committee Report on reforms of the criminal justice system — Constitution of India — Arts. 21, 14 and 32**

**(Para 10)**

SS-M/S/28884/SR

Advocates who appeared in this case:

P.P. Rao and T.R. Andhyarujina, Senior Advocates (S. Murlidhar, Somiran Sharma and Rajat Khosla, Advocates), for the Petitioner;

Ms Hemantika Wahi, Advocate, for the Respondents.

ORDER

1. Permission to file special leave petition is granted.
2. Application for impleadment of the Union of India is allowed.
3. This special leave petition under Article 136 of the Constitution of India has been filed against the judgment and order dated 27-6-2003 passed by the Additional Sessions Judge, Fast Track Court No. 1, Vadodara, Gujarat, in Sessions Case No. 248 of 2002. The prayer in this petition is to grant special leave to appeal against the said judgment and further, to set aside the judgment under challenge and further to direct fresh investigation through an independent agency and trial by a court situated outside the State of Gujarat.
4. When this matter was taken up it was brought to our notice that against the aforesaid judgment the State of Gujarat has preferred an appeal before the High Court. Under such circumstances, unless we see the grounds of appeal no effective order, as prayed in this special leave petition, can be passed.



5. However, the right to a reasonable and fair trial is protected under Articles 14 and 21 of the Constitution of India, Article 14 of the International Covenant on Civil and Political Rights, 1966 to which India is a signatory, as well as Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950.

6. On perusal of the allegations in the special leave petition and a number of criminal cases coming to this Court, we are prima facie of the opinion that criminal justice delivery system is not in sound health. The concept of a reasonable and fair trial would suppose justice to the accused as also the victims. From the allegations made in the special leave petition together with other materials annexed thereto as also from our experience, it appears that there are many faults in the criminal justice delivery system because of apathy on the part of the police officers to record proper report, their general conduct towards the victims, faulty investigation, failure to take recourse to scientific investigation, etc. The Central Government with a view to carry on reforms of the criminal justice system appointed a committee, headed by Justice Malimath. The terms of reference of the said Committee were as under:

"To examine the fundamental principles of criminal jurisprudence, including the constitutional provisions relating to criminal jurisprudence and see if any modifications and amendments are required thereto.

To examine in the light of findings on fundamental principles and aspects of criminal jurisprudence as to whether there is a need to rewrite the Code of Criminal Procedure, the Penal Code, 1860 and the Indian Evidence Act to bring them in tune with the demand of the times and in harmony with the aspirations of the people of India.

To make specific recommendations on simplifying judicial procedures and practices and making the delivery of justice to the common man closer, faster, uncomplicated and inexpensive.

To suggest ways and means of developing such synergy among the judiciary, the prosecution and the police as restores the confidence of the common man in the criminal justice system, by protecting the innocent and the victim and by punishing unsparingly the guilty and the criminal.

To suggest sound system of managing, on professional lines, the pendency of cases at investigation and trial stages and making the police, the prosecution and the judiciary accountable for delays in the respective domains."

**7.** Justice Malimath Committee has since submitted its report. The recommendations of the said Committee, however, are yet to be implemented. No law has yet been enacted, not even a scheme has been framed by the Union of India or by the State Government for giving protection to the witnesses. For successful prosecution of the criminal cases, protection to witnesses is necessary as the criminals have often access to the police and the influential people. We may also place on record that the conviction rate in the country has gone down to 39.6% and the trial in most of the sensational cases do not start till the witnesses are won over. In this view of the matter, we are of the opinion that this petition be treated to be one



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under Article 32 of the Constitution of India as public interest litigation leaving the question about admissibility of this special leave petition to be decided later on.

**8.** Issue notice to the State of Gujarat and also to the Union of India.

**9.** Ms Hemantika Wahi, advocate, accepts notice on behalf of the State of Gujarat. She prays and is allowed three weeks' time to file counter-affidavit. In the said counter-affidavit the State of Gujarat shall clearly indicate as to the steps, if any, taken by it for extending protection to the lives of victims, their families and their relations; if not, the same would be done. The counter-affidavit shall also indicate as to whether any action has been taken by the State against those who are said to have extended threat or coercion to the witnesses, as a result whereof allegedly the witnesses change their statements before the court. The State shall also file a copy of memo of appeal lodged before the High Court against the acquittal of the accused in *Best Bakery case* and also the statements of witnesses who turned hostile under Section 161 CrPC and before the Sessions Judge.

**10.** The Union of India would also file a counter-affidavit as to the steps taken by it to implement the recommendations of Justice Malimath Committee, the proposal, if any, to enact a law for grant of protection to the witnesses, as is prevalent in several countries, and other steps sought to be taken for implementing the criminal justice delivery system.

**11.** Until further orders we direct the State of Gujarat to provide full and complete protection to the witnesses, their families and their relations, in the following cases:

(i) Criminal Cases Nos. 1-6 of 2003, pending in the Court of Special Judge, POTA, Ahmedabad (titled *State v. Mohd. Rafudan Ansari*).

(ii) Crime No. 9 of 2002 pending in the Juvenile Court, Godhra (titled *State v. Junia Farooq Hassan*).

(iii) Criminal Case No. 275 of 2002 arising out of FIR No. 46 of 2002 dated 28-2-2002 of Police Station Bijaypur, pending in the Court of Sessions Judge, Mehsana, Gujarat (titled *State v. Patel Rameshbhai Kanjibhai*).

(iv) Sessions Case No. 152 of 2002 (titled *State v. Kailash Lalchand Bhai Dhobi*) pending in the Court of Sessions Judge, Bhadra, Ahmedabad.

(v) Criminal Case No. 1720 of 2002 (titled *State v. Shankarji Hakaji Mali*) pending in the Metropolitan Magistrate Court No. 11, Ahmedabad.

(vi) Criminal Case No. 296 of 2003 (titled *State v. Sandeep alias Sonu Ghunghru Val Valo*) pending in the Metropolitan Magistrate Court No. 11, Ahmedabad.

(vii) Criminal Case No. 524 of 2002 (titled *State v. Vishal Badrilal Nayee*) pending in the Juvenile Court No. 4, Ahmedabad.

(viii) Criminal Case No. 982 of 2002 pending in the Metropolitan Magistrate Court

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No. 11, Ahmedabad (titled *State v. Naresh Amarsingh Chhara*).



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(ix) Criminal Case No. 1662 of 2002 pending in the Metropolitan Magistrate Court No. 11, Ahmedabad (titled *State v. Padmendra Singh*).

*Transfer Petitions (Crl.) Nos. 194-202 of 2003*

**12.** At present we are not disposed to pass any order. Tag these transfer petitions with the petition arising out of Crl. MP No. 6797 of 2003.

**13.** List these matters after four weeks.

Court Masters

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<sup>†</sup> From the Judgment and Order dated 27-6-2003 in Sessions Case No. 248 of 2002 of the Additional Sessions Judge, Fast Track Court No. 1, Vadodara, Gujarat

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