

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION (DIRECTION) NO. 6171 of 2022**

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ANIQ ASIFIQBAL KADRI
Versus
STATE OF GUJARAT

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Appearance:

MR MIHIR JOSHI, SENIOR ADVOCATE WITH MR ARJUN M JOSHI(11247)
for the Applicant(s) No. 1

MR PERCY KAVINA, SENIOR ADVOCATE WITH MR NARENDRA L
JAIN(5647) for the Respondent(s) No. 3

MS CM SHAH, APP for the Respondent(s) No. 1
RULE SERVED for the Respondent(s) No. 2

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CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 01/02/2024

ORAL ORDER

1. By invoking extraordinary jurisdiction of this Court, under Article 226 of the Constitution of India, read with Section 482 of the Code of Criminal Procedure, 1973, the applicant - Aniq A. Kadri is seeking issuance of writ in the nature of mandamus or any other appropriate writ, order or direction for quashing notice dated 15.06.2022 issued under Section 41(A) of the Code of Criminal Procedure, 1973.
2. This Court has heard learned Senior Counsel Mr.Mihir Joshi assisted by Mr.A.M. Joshi, learned counsel, Mr.Percy Kavin, learned Senior Counsel assisted by Mr.Narendra L.

Jain, learned counsel, private respondent Viral Shah party in person and Ms.C.M. Shah, learned APP for the respondent – State.

3. Brief facts leading to the filing of this application are that the applicant being practicing advocate, has filed this application for quashing of notice dated 15.06.2022 (Annexure-A) under Section 41(A) of the Code of Criminal Procedure, 1973 issued by P.S.I., Pethapur Police Station, Gandhinagar. Pursuant to the FIR, being C.R.No.1121601022020 of 2022 registered with Pethapur Police Station for the offences punishable under Sections 387, 389, 120(B), 143, 147, 149, 323, 504, 506(2) and 342 of the Indian Penal Code, the applicant was directed to appear on 16.06.2022 as the I.O. having credible material against him for giving shelter to accused no.3, who is a designated Senior Counsel of this Court, with whom, the applicant is working to assist him in the legal matter.
4. Mr.Mihir Joshi, learned Senior Counsel, has submitted that the notice impugned was issued with *malafide* intention and mounting pressure on the person named in the FIR and thus, there is no justifiable reason to issue such kind of notice. He would further urge that the

criminal proceedings qua designated senior has been quashed by the Apex Court and on that ground alone, the notice proceedings deserves to be quashed.

5. Mr.Percy Kavina, learned Senior Counsel, has submitted that the applicant is bound to accept any brief in the Court and it is his duty to uphold the interests of his client by all the fair and honourable means. In that view of the matter, the issuance of the notice on the practitioner advocate without any justifiable reasons or any active role or any participation in the alleged offence would nothing, but an attempt on the part of the executive or police agency to deter the legal practitioner to refrain him, in appearing for and on behalf of his client.
6. In view of the aforesaid contentions, learned Senior Counsel has submitted that the police agency by misusing the statutory provisions, has illegally issued notice without their being any substantial material involving the applicant herein in the alleged offence.
7. Having regard to the facts and circumstances of present case and having considered the contentions raised herein, it is no doubt true that the FIR lodged against the Senior Counsel has been quashed by the Apex Court. The

questioned FIR came to be filed on 15.05.2022 and on 16.05.2022, the designated counsel named in the FIR had approached this Court by filing a quashing petition and thereafter, the petition under Section 438 of the Code of Criminal Procedure, 1973 and the same was granted by the Coordinate Bench of this Court on 08.06.2022. In such circumstances, the police agency wants necessary inputs about the whereabouts of the senior counsel for which, by invoking Section 41(A) of the Code of Criminal Procedure, 1973, the applicant was directed to appear on 16.06.2022.

8. In view of the aforesaid facts and considering the peculiar facts and circumstances of present case, this Court is of the *prima facie* view that the practice of the investigating agency to issue notice under Section 41(A) of the Code of Criminal Procedure, 1973 on the practicing advocate, who having no any direct involvement in the alleged offence or having limited interest to defend his client is not at all acceptable and tolerable and the action on the part of the police is deprecated.
9. The Apex Court in its various judgments time and again has observed that the India is a democratic country and its constitution is supreme. The judiciary has been conferred

with the responsibility to protect and uphold the constitution. The judges and lawyer are two main pillars of the judicial system and absolutely indispensable to the mechanism of administration of justice. Therefore, in order to ensure their effective contribution in upholding the constitution, necessary protection is required for the action of discharge of their official or professional duty. Reference can be made to the judgment of **Central Bureau of Investigation, Hyderabad Vs. K. Narayan Rao**, wherein protecting the advocate, the Apex Court has observed that the lawyer acting in his professional capacity cannot be subjected to criminal prosecution.

10. For the reasons aforementioned, the notice at Annexure-A dated 15.06.2022 and the consequential proceedings thereof qua the applicant are hereby quashed. Accordingly, present application is **allowed** in the aforesaid terms.
Direct Service is permitted.

(ILESH J. VORA,J)

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