

R. K. SHAH / NAYANA BHATT
Spl./Asst. Spl. Public Prosecutor
(Gulberg Case)

Office:- 3, Sardar Patel Chambers,
Vasant Chowk, Bhadra,
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Date: 25-02-2010

To,
Chairman,
Special Investigation Team,
Godhra Riot Cases,
BL.11, Dr. Jivraj Mehta Bhavan,
Gandhinagar.

Sub:- Meghanagar Police Station I.C.R. No. 67/02
S.C. No. 152/02 (Gulberg Case)

Sir,

We occasionally used to have conferences with SIT or one or other member or members thereof and exchanged piecemeal our views about the investigation and trial.

We had such last meeting on 19.02.2010 and in the said meeting you alongwith Mr. Paramvir Singh, Mr. Ashish Bhatia were present. The Investigation Officers Shri J.M. Suthar, Dy. S.P., Shri Goswami, P.I. and Shri Parmar, P.S.I. were also present and it appeared at the meeting that Mr. Ashish Bhatia and the Investigation Officers had misplaced grievances against us and we had clarified the matters. However, thereafter later I (R.K. Shah) called Mr. Paramvir Singh on his cellphone and offered to resign.

You are aware that the trial started in the right earnest and was proceeding expeditiously and by now about 290 witnesses are examined and about 50 or so witnesses remain to be examined and the rest I propose to drop.

It is needless to state that the witnesses are being summoned 8 years of the incident and many panch witnesses and witnesses from the public could be traced with difficulty and some could not be traced. Many police personnel had retired and many had been transferred to various places. The victim eye-witnesses were deposing after 8 years. They had grown old, their eye-sight might have been weakened and might be having fading memory.

The attitude of the Learned Judge towards the witnesses, particularly victims-eye witnesses has by and large remained hostile and unsympathetic. He browbeats them or threatens them or taunts them. He does not allow witnesses to go to dock for the purpose of identification and insists for identification from the witness box as if he is holding test identification parade and the most material evidence regarding identification of the accused gets affected.

The recording of evidence is also not satisfactory. He generally does not record the explanation given by a witness. Particularly while recording cross-examination, in the name of non-interference in cross-examination, he does not allow us to object a question. The contradictions with the police statements are correctly recorded as per Sec. 145 of the Evidence Act. The witnesses are not properly confronted with the previous statements and their explanation is not sought and a witness, if voluntarily, explains it is not recorded and thus the whole object of Sec. 145 of the Evidence Act is marred.

Though the statements before police during investigation are not admissible the Learned Judge records them in breach of Sec. 162 of the Cr. P.C. In one such order he has observed that the Special Public Prosecutor does not refresh the memory of the witness by using such statement. He even records hearsay evidence. There is a general feeling that he is hostile to the prosecution.

He does not read out the evidence to the witnesses as provided in Sec. 278 Cr. P.C., even after the written application by the Learned Advocates for the victim-eye witnesses and the precious right of the witnesses is lost.

The Learned Judge sometimes puts questions to the witnesses which also reflect the bias.

You are aware that the victim eye witnesses filed affidavit during the course of hearing of the application u/s. 319 Cr. P.C. and expressed their apprehension that they will not get justice. Those allegations are to be looked at in the above back ground.

The Learned Judge insults and humiliates the Special Public Prosecutor for no reason and often sarcastically reminds him that he is the most Sr. Public Prosecutor. He off and on tries to belittle the Special Public Prosecutor.

As regards the investigation, full papers of investigation are not supplied to us and many-a-times the statements of witnesses are provided when they are in the witness box. For example, when I (R.K. Shah) was examining the important witness like Mr. M. K. Tandon, the then Jt. Police Commissioner, his further statement before police and a copy of his affidavit before Nanavati Commission were put in my hand; when Mr. P. B. Gondia, the then DCP-Zone-4 was in the witness box his two previous statements before police and a copy of his affidavit before Nanavati Commission were given to me. On 17.02.2010 when more than 250 witnesses were already examined and six months had elapsed after the trial began a bunch of papers including many statements of witnesses recorded as far back as 01.04.2009 were given to me at the time when I was examining a witness in the Court room. This is something which no Investigation Officer would do.

All the while Mr. Bhatia insisted upon to see that the victim eye-witnesses should depose according to their statements before SIT. It may please be seen that the witnesses speak as per their first statement before SIT but they disown their further statements which I find to be damaging to the prosecution and at times wiping out their first statements. I fail to understand why such further statements were required to be recorded which no witness would admit particularly when they have engaged a private lawyer.

CD produced by Mr. Rahul Sharma, its copy taken out by Mr. Gemad and the transcript are yet not produced before the Court.

Mr. Ashish Khaitan is summoned by the Court on 08.03.2010 but I do not know where do we stand about FSL opinion and when the camera, chips, laptop etc. used by Mr. Khaitan are going to be produced and when we will be able to interview Mr. Khaitan though we had expressed our desire to do so much earlier.

In this week, on 22/2 and 23/2 the witnesses were examined from 11:00 a.m. to 5:30 p.m. Even on 24/2 a witnesses was cross-examined till about 1:00 p.m. and then there was no witness available as Mr. Singhal though present could not be examined in view of the fact that he had filed charge-sheet in the case and two other witnesses did not turn up. We gave detailed application for adjournment for the remaining time in the day. The Learned Judge was wild at me (R.K. Shah) and he began to shout at me. I had to tell him that I was not on trial and he should not behave in that fashion and thereafter he passed without our consent the order summoning the witnesses on 2/3, 3/3 and 8/3 and directed me to make an application on 03.03.2010 as to whom I want to examine on what day. Expeditious trial on day to day basis does not mean hurried trial at the cost of justice. It is not the spirit of the order of the Hon'ble Apex Court which has also observed in its order as under:

“(iv) It is imperative, considering the nature and sensitivity of these nominated cases, and the history of the entire litigation, that senior judicial officers be appointed so that these trials can be concluded as soon as possible and in the most satisfactory manner. In order to ensure that all concerned have the highest degree of confidence in the system being put in place.....”.

Under the above said facts and circumstances we feel that we won't be able to do justice to the cause of the prosecution and we are constrained to resign and enclose herewith our resignation letters for being forwarded to Legal Department, Sachivalaya, Gandhinagar.

Encl: As above

Yours truly,

R. K. Shah
Special Public Prosecutor

Nayana B. Bhatt
Asstt. Special Public Prosecutor

Date: 25.02.2010

To,
Secretary,
Legal Department,
Government of Gujarat,
Sachivalaya,
Gandhinagar

Sir,

Sub:- Resignation
Meghaninagar Police Station I.C.R. No. 67/02
(Gulberg Case)

The way in which the trial is being held and the prosecution dealt with I am unable to do justice to the prosecution and hence I resign from the post of the Special Public Prosecutor in the above case. Kindly accept the same and relieve me.

Yours faithfully,

(R.K. Shah)

Date: 25.02.2010

To,
Secretary,
Legal Department,
Government of Gujarat,
Sachivalaya,
Gandhinagar

Sir,

Sub:- Resignation
(Meghaninagar Police Station I.C.R. No. 67/02
(Gulberg Case)

The way in which the trial is being held and the prosecution dealt with I am unable to do justice to the prosecution and hence I resign from the post of the Assistant Special Public Prosecutor in the above case. Kindly accept the same and relieve me.

Moreover, I was recommended by Mr. R.K. Shah as his Assistant and as he has resigned I do not think it proper to continue on the post.

Yours faithfully,

(Nayana B. Bhatt)