

(1966) 01 GUJ CK 0001
In the Gujarat High Court

Alubhai Mujatbhai

APPELLANT

Vs

The State of Gujarat

RESPONDENT

Date of Decision : 17-01-1966

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 173, 173, 4(1)(h), 4(1)(h)
Post Office Act, 1898 — Section 53, 72

Citation : (1966) 7 GLR 698

Hon'ble Judges : N.G. Shelat, J

Bench : Single Bench

Judgement

N.G. Shelat, J.—This Appeal arises out of an order passed on 21-9-64 by Mr. K. H. Damani, City Magistrate, 10th Court, Ahmedabad, in Criminal Case No. 178 of 1964, whereby the accused-appellant came to be convicted and sentenced to suffer rigorous imprisonment for six months and to pay a fine of Rs. 50/-, or, in default, rigorous imprisonment for 15 days for an offence u/s 53 of the Indian Post Office Act.

2. The charge against the appellant-accused was that on or about 3rd of October 1963, while "he was in service as a letter-box peon in New Civil Hospital Post Office at Ahmedabad, he opened postal articles in course of transmission contrary to his duty, and wilfully detained or delayed the said postal articles and thereby committed an offence punishable u/s 53 of the Indian Post Office Act.

3. One Shri Mangubhai Nanubhai Desai who was working as an Investigating Inspector in the office of the Post Master General at Ahmedabad, on receipt of some information regarding the accused who was working as letter-box peon in New Civil Hospital Post Office, Ahmedabad, removing postal letters, stamps and other articles, made an inquiry in the matter. The accused on being questioned, had produced about 15 envelopes and a post-card, Exs. 6 to 21. Thereupon he made a report, and after obtaining an order from the Post Master General, Ahmedabad, lodged a complaint Ex. 23 to the P.S.I. Madhupura Police Station on 4-12-63. After making the necessary investigation of the case, the P.S.I. sent up

the charge-sheet against the accused for an offence u/s 53 of the Indian Post Office Act to the Court of the City Magistrate, 10th Court, u/s 173 of the Criminal Procedure Code. The accused denied to have committed any offence. The learned Magistrate after considering the effect of the evidence found the accused guilty and sentenced him as stated here above. Feeling dissatisfied with that order, the accused has come in appeal.

4. The only contention made out by Mr. Shethna, the learned advocate for the appellant-accused is that having regard to Section 72 of the Indian Post Office Act read with the definition of the term "complaint" u/s 4(1)(h) of the Criminal Procedure Code, 1898, the Court of the learned Magistrate was not justified in law to take cognizance of an offence punishable u/s 53 of the Indian Post Office Act against the accused and that, therefore, the order of conviction and sentence passed against the appellant is bad in law.

5. Section 72 of the Indian Post Office Act provides that "no Court shall take cognizance of an offence punishable under any of the provisions of sections 51, 53, 54 Clauses (a) and (b), 55, 56, 58, 59, 61, 64, 65, 66 and 67 of this Act, unless upon complaint made by order of, or under authority from, the Director General or a Post Master General." The term "complaint" is defined in Section 4(1)(h) of the Criminal Procedure Code as meaning "the allegation made orally or in writing to a Magistrate, with a view to his taking action, under this Code, that some person, whether known or unknown, has committed an offence, but it does not include the report of a police officer." Now it is clear that the complaint has not been filed direct in Court by any person authorised by the Director General or the Post Master General and that it was made to the police officer on 4-12-63 by Shri Mangubhai the Investigating Inspector in the Office of the Post Master General, in pursuance of an order sanctioning, the same by the Post Master General, Ahmedabad. While, therefore, the complaint was lodged with the police under the authority of the Post Master General, it was not directly lodged before the Court, and the question therefore is whether the term "complaint" used in Section 72 of the Indian Post Office Act, has to be read and understood as one contemplated by Section 4(1)(h) of the Criminal Procedure Code. Such a term "complaint" has not been defined in the Post Office Act. However when such a term is used in a provision such as this relating to the taking of cognizance of offence under certain provisions of the Act, it has to be given a legal meaning and that can be taken as one defined in Section 4(1)(h) of the Criminal Procedure Code. It cannot be taken as meaning merely an information to be given to the police by an officer of the Postal Department. It restricts the competence of the Court to take cognizance of the offences mentioned therein, under the Post Office Act, and has, therefore, to be strictly complied with. Now, a police report sent to the Court against the accused-appellant u/s 173 of the Criminal Procedure Code, is not a complaint within the meaning given to it u/s 4(1)(h) of the Criminal Procedure Code. Since no complaint is validly given by the complainant to the Court, in respect of an offence u/s 53 of the Indian Post Office Act, as required u/s 72 of the Act, the Court would not be entitled to

entertain it in law. Such a view has been taken by this Court in a case of *Narotamdas Bhikhabhai v. State of Gujarat* reported in 1965(2) Cri.L.J. 165.

5.1 In absence of a valid complaint before the Court therefore, the j cognizance of the offence taken by the Court contravened the provisions contained in Section 72 of the Indian Post Office Act, and therefore the order of conviction and sentence passed by the learned Magistrate shall be set aside. It may, however, be open to take suitable and proper action in accordance with law by complying with the provisions contained in Section 72 of the Indian Post Office Act.

6. The appeal is allowed and the order of conviction and sentence passed against the appellant-accused u/s 53 of the Indian Post Office Act is set aside. The accused is acquitted. Fine if paid, is directed to be refunded. The bail bond of the accused shall stand cancelled.