
(1971) 01 GUJ CK 0002
In the Gujarat High Court

Amin Shushilaben Chandrakant

APPELLANT

Vs

Amin Bhaskar Purshottam and Others

RESPONDENT

Date of Decision : 19-01-1971

Acts Referred:

Constitution of India, 1950 — Article 14
Criminal Procedure Code, 1898 (CrPC) — Section 417(3), 417(3)
Penal Code, 1860 (IPC) — Section 114, 323, 342

Citation : (1971) 12 GLR 1041

Hon'ble Judges : P.N. Bhagwati, C.J.; M.P. Thakkar, J

Bench : Division Bench

Judgement

M.P. Thakkar, J.—The vires of Section 417(3) of the Code of Criminal Procedure (alluded to as "Code" in the course of this judgment) have been called into question by the original accused (respondents Nos. 1 to 7 who were acquitted by the trial Court) in this appeal against their acquittal institute by the original complainant with special leave granted by the High Court under the said provision. Upon the vires being challenged, a notice was issued to the Attorney General and the matter was referred to the Division Bench.

2. The history of the events leading to this reference may be briefly traced. Respondent No. 1, Amin Bhaskar Purshottam, and six others were prosecuted on a complaint instituted by appellant Amin Sushilaben Chandrakant for offences under Sections 342, 323 and 114 of the Indian Penal Code in the Court of the learned Joint Judicial Magistrate, First Class, Patan, in Criminal Case No. 3485 of 1967. Respondents Nos. 1 to 7 were acquitted by the learned trial Magistrate. The appellant, feeling aggrieved, applied to the High Court for special leave to appeal against the order of acquittal under Sub-section (3) of Section 417 of the Code. Special leave was granted and the appeal was thereafter admitted. At the threshold of the hearing of the appeal on merits, respondents Nos. 1 to 7, the accused in the trial Court, have raised the question regarding the vires of Sub-section (3) of Section 417 of the Code.

3. The challenge has taken two forms. First, the question has been approached from the stand point of the accused. It is complained that it results in denial of equal protection of laws to the accused. The second approach that has been made is from the point of view of the complainant. It is submitted that a hostile discrimination arises inasmuch as the right to prefer the appeal is given to the complainant who instituted the original complaint while no such right is conferred on the victim of the offence who himself may not have acted as the formal complainant.

4. In order to properly understand the argument, the said provision requires to be quoted. It is in these terms:

417. (3) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

Counsel argues that it denies equal protection of laws to the accused and thereby offends the equal protection clause embodied in Article 14 of the Constitution of India. In what manner does it operate to deny equal protection to an accused? Counsel explains that in cases arising out of offences which are cognizable offences, it is not obligatory that the case should be commenced by a police report. Even in regard to offences which are cognizable, a private party may institute a complaint before a Magistrate u/s 190 of the Code. In such a case, having regard to the scheme of Section 417, the accused would have to face to peril of an appeal (calling into question his acquittal) from two separate quarters. First, under Sub-section (1) of Section 417, which empowers the State Government to appeal to the High Court from an order of acquittal passed by any Court other than the High Court. Secondly, under Sub-section (3) of Section 417 by a complainant, if an appeal has been preferred after obtaining special leave from the Court in this behalf. It is contended that the accused in a cognizable case will have to face the peril of his acquittal being challenged from the aforesaid two sources if the prosecution was commenced by instituting a complaint u/s 190 whereas he will not have to face a similar peril if the prosecution was commenced against him in regard to a cognizable offence under a police report. This, it is argued, constitutes denial of equal protection before the law. It is true that even in regard to offences which are made cognizable by the Code, prosecution may be commenced by instituting a complaint before the Magistrate. It is also true that an accused who faces the prosecution in relation to an offence which is made cognizable is exposed to the order of acquittal, if any, being called into question from two quarters viz., (1) the State invoking the powers under Sub-section (i) of Section 417 and (2) the complainant who instituted the complaint invoking the jurisdiction of the Court after obtaining special leave under Sub-section (3) of Section 417. The question then is whether this constitutes denial of equal protection of laws. The answer depends on posing and answering the question as to whether persons who are prosecuted upon a

complaint being instituted before a Magistrate, are similarly situated as compared to the accused against whom prosecution is commenced on a police report. Be it realized that the accused in all cases instituted on a complaint face a similar peril from the aforesaid two sources. It is not as if some of the persons in this class of cases are treated differently. The class of cases where the prosecution of the accused is commenced on the institution of a complaint is a distinct class. And all the persons who face a prosecution of this class are treated similarly. There is no discrimination whatsoever. Ordinarily in regard to offences which are made cognizable prosecution is commenced on a police report. Of course in theory a private party has a right to commence prosecution (and occasionally he does so) by instituting a complaint before a Magistrate. By and large, however, in respect of offences which are made cognizable, the prosecution is commenced by a police report. But the class of cases where prosecution has not been commenced by a police report and the party himself sets the machinery of the Criminal Court in motion by instituting a complaint before the Magistrate u/s 190 of the Code belongs to a different genre altogether. For one reason or the other, the cognizance of the offence was not taken by the police and the matter was not brought before the Court by a police report. That is the reason why the machinery of the Criminal Court had to be resorted to by a private party by instituting a complaint. It is in such class of cases that the complainant gets the right to move the Court u/s 417 (3) of the Code for special leave to appeal against the order of acquittal. The accused however cannot be said to be similarly situated in cases where the prosecution has been commenced upon a complaint being instituted before a Magistrate. If, for instance, in the matter of prosecutions commenced on institution of complaint before a Magistrate, the accused were treated in a different manner, a legitimate grievance could have been made. The class of cases where the prosecution is commenced on a police report constitutes an altogether different class. It would therefore be illogical to find fault with the fact that in one class of cases the accused faces peril from two quarters whereas in the other he faces the peril from the peril from only one quarter. The reason for the classification is also self evident. The hand which launched the prosecution is different. In the former the police officer initiated the proceedings. In the latter a private individual did so. It is founded on intelligible differentia which has a rational relation to the object sought to be achieved. The law operates alike on all persons under like circumstances. It cannot be said that persons who are placed in a similar situation and are similarly situated are treated in a dissimilar manner. In regard to all those persons who are accused of a criminal offence of a cognizable nature, they are given equal treatment inasmuch as wherever such a prosecution has been commenced by institution of a complaint before a Magistrate, recourse to Sub-section (3) of Section 417 for subjecting the order of acquittal to an appeal is permissible. It is not as if out of the persons who face a prosecution in regard to a cognizable offence emanating from the complaint instituted u/s 190 some are subjected to the peril of the order of acquittal being exposed to an appeal under Sub-section (3) of Section 417 and the other accused similarly situated are

not subjected to a similar risk. Therefore, it is futile to contend that persons who are accused of a cognizable offence do not receive equal protection of laws. The risk run by all the persons accused of such an offence who are similarly situated, namely, persons accused of a cognizable offence commenced upon an institution of a complaint before a Magistrate, is the same. They are equally treated by the law in the sense that all of them are liable to be proceeded against under Sub-section (3) of Section 417, and there is no discrimination. It is, therefore, not possible to accede to the argument that Sub-section (3) of Section 417 offends the equal protection clause enshrined in Article 14 of the Constitution of India.

5. The learned Counsel has challenged the vires of Sub-section (3) of Section 417 from a different angle also. This time the argument is based on the alleged discrimination from the point of view of the person on whom the right to prefer an appeal has been conferred under Sub-section (3) of section 417 of the Code. The said provision confers the right to appeal from an order of acquittal on a complainant provided he obtains special leave in this behalf. The expression "complainant" has not been defined by the Code of Criminal Procedure. All the same, by and large, the expression "complainant" has been interpreted to refer to the person who institutes the complaint" before the Magistrate u/s 190 of the Code of Criminal Procedure and who gives evidence in the Court in his capacity as the complainant. The learned Counsel for the respondent-accused has placed into focus the fact that the victim who is really aggrieved or injured may himself not be the complainant who institutes the complaint u/s 190 of the Code of Criminal Procedure. In such a case, such is the submission, the person who is really injured or aggrieved does not get a right to call into question the order of acquittal but the person who institutes the complaint and is labelled as the complainant gets such a right. It is argued that to confer a right of appeal on the complainant instead of conferring it on the victim who is actually injured or aggrieved is unreasonable. The question before us however, is not one of legislative wisdom or policy. The question before us is whether Sub-section (3) of Section 417 is rendered ultra vires on the ground that hostile discrimination is practised by conferring the right of appeal against the order of acquittal on the complainants as a class. We will examine the validity of this challenge though we fail to see how the accused can complain of the alleged discrimination. If at all, the victim of the crime may complain of it, and if the challenge is well conceived, the victim may become entitled to file an appeal even if he is not a complainant. The accused surely cannot complain of hostile discrimination being practised against the victim of the assault. We will however examine the challenge on its own merits. For successfully contending that by conferring a right of appeal on the complainant, hostile discrimination has been practised against others, it will have to be shown that persons similarly situated are treated differently. Now so far as Sub-section (3) of Section 417 is concerned, all the persons who have instituted the complaint have been empowered to invoke the jurisdiction of Sub-section (3) of Section 417 of the Code regardless of the question whether the complainant happens to be the person who is directly injured or aggrieved or

whether he happens to be the person formally moving the Court by way of complaint to set the machinery of the Criminal Court in motion. It cannot be overlooked that the person who acts as the "complainant" evinces the most active interest in setting the machinery of the Criminal Court in motion for vindication of the cause of justice and for bringing the culprit to book. The "complainant" is the person who has exhibited most active and special interest in the matter and stands in a class by himself. It may also be realised that a complainant who institutes a complaint exposes himself to the risk of being proceeded against for malicious prosecution. It is, therefore, evident that a person of this category who has played the most active role and who has at some personal risk to himself set in motion the machinery of the Court for vindication of the ends of justice and for bringing to book the culprit falls within a special category. Be it also realised that a person who is directly injured and aggrieved is not precluded from acting as a complainant. It is conceivable that in a small number of cases the victim who is directly aggrieved may himself not have acted as the complainant and someone else may have acted as the complainant. That, however, does not mean that the person who is similarly situated has been treated differently. The Legislature has applied a practical test by selecting the person who has exhibited the most active interest and taken upon himself the responsibility of instituting the complaint to invest him with the power to prefer an appeal under Sub-section (3) of Section 417 and to bring to a conclusion the proceeding which was initiated by him. He was (let it be realised) the person who initiated the proceeding in the first instance with a view to redress the injustice and bring to book the culprit. It is that very person who is enabled to take over at the second stage and call into question the order of acquittal with the end in view to bring the culprit to book and to ensure that the offender does not go unpunished. It is, therefore, not possible to hold with the learned Counsel that hostile discrimination has been practised between the complainant on the one hand and the person who is directly injured or aggrieved on the other. It is one thing to say that hostile discrimination has been practised against the person who has been directly injured or aggrieved. It is another to say that a similar right ought to have been conferred on him as well. Whether or not such a right should be conferred on the person who is directly injured or aggrieved is a question for the Legislature to examine. It may be that there is a very good case for conferring such a right on the victim who is directly injured or aggrieved. That, however, does not mean that hostile discrimination has been practised against him. He has not been discriminated against at all. If he happens to be the complainant, he has a right to invoke the jurisdiction of the Court under Sub-section (3) of Section 417. All who are similarly situated have been conferred a similar right. It cannot, therefore, be said that any hostile discrimination has been practised. Again, as discussed earlier, there is good principle underlying the conferment of the right on the complainant inasmuch as the realities of the situation show that the complainant is the very person who has evinced the most active interest and played the key-role in setting in motion the machinery of the "Criminal Court. It was that person to whom the

prosecution owed its origin and it is on that person that a right has been conferred to continue the proceeding in the Court of appeal to ensure that a guilty person does not escape." Under the circumstances, we are unable to assent to the proposition that Sub-section (3) of Section 417 results in hostile discrimination being introduced against the person who has been directly injured or aggrieved. This ground of attack must also be repelled.

6. Lastly it has been contended that in criminal matters it is the State which has been considered as the custodian of public interest and that such a right should not have been conferred on a complainant at all. That again is a question of legislative policy. It is no doubt true that in conferring such a right on a complainant, certain policy questions are involved. The Legislature was, however, aware of the fact that an appeal against acquittal might be undertaken to wreck private vengeance even in frivolous matters. If such powers are vested in the State, there is a reasonable assurance that appeal against acquittal would be resorted to only in fit cases and with a view to secure the ends of justice solely from the point of view of public interest. But that is precisely the reason why the Legislature has enacted a safeguard by making special leave under Sub-section (3) of Section 417 a precondition in the case of a complainant. While the State has a right to file an appeal and does not have to obtain special leave from the Court for filing such an appeal, if the complainant wants to move the Court by way of an appeal to challenge the order of acquittal, he is required to obtain special leave u/s 417(3) of the Code.

7. In our judgment it is not possible to challenge the vires of Sub-section (3) of Section 417 on the ground that the right to appeal has been conferred on a complainant. The question is, does it constitute denial of equal protection to the accused or does it introduce hostile discrimination and does it treat persons who are similarly situated in a different manner? Whether or not right to appeal against acquittal should be conferred on the State alone is a question of legislative policy and it cannot have impact on the issue as regards the vires of Sub-section (3) of Section 417 of the Code of Criminal Procedure. We are, therefore unable to accept the submission of the learned Counsel for the respondents-accused that Sub-section (3) of Section 417 offends the equal protection clause embodied in Article 14 and is on that account ultra vires the Constitution of India. We hold that the said provision is intra vires.

In this view of the matter the appeal will have now to be heard on merits by the Court hearing criminal appeals. The reference is disposed of with the answer that Sub-section (3) of Section 417 of the Code of Criminal Procedure is intra vires.