

(1984) 10 GUJ CK 0013
In the Gujarat High Court

Arvindkumar Jwalaprasad and Another	APPELLANT
Vs	
Chinubhai Babaldas Shah and Another	RESPONDENT

Date of Decision : 10-10-1984

Acts Referred:

Citation : (1985) 1 GLR 272

Hon'ble Judges : S.B. Majmudar, J;J.P. Desai, J

Bench : Division Bench

Judgement

S.B. Majmudar, J.—Rule. Mr. S.T. Mehta, learned P.P. waives service the rule for the State and Mr. Nitin Amin waives service of the rule for respondent No. 1 - original complainant. With the consent of the learned Counsel for the parties, rule is heard today. This application is filed by original accused challenging the order passed by the learned Metropolitan Magistrate, 3rd court, Ahmedabad on 21-8-1984 rejecting the applicant's request to refund the fine deposited by them pursuant to the earlier order of the learned Metropolitan Magistrate which came to be set aside in appeal by the learned Additional City Sessions Judge, 13th court, on 9-2-1984.

2. It is true that the appeal against acquittal of the present petitioners is already admitted by this Court being criminal appeal No. 982 of 1984. However, that does not mean that the order passed by the learned Additional City Sessions Judge directing fine, if paid, to be refunded to the accused is in any way suspended or get stayed at any time. Once the learned Additional City Sessions Judge directed that fine, if paid, to be refunded to the accused it is difficult to appreciate how the learned Magistrate could have refused to refund the fine amount to the petitioners-accused.

3. It must be kept in view that this fine amount is not any muddamal article. Even otherwise, if at all the appeal against acquittal gets allowed in future, liability of the petitioners to either being confined in jail or to pay fine or both will have to await final decision in the appeal against acquittal. That eventuality has still not occurred. The earlier order passed by the learned Magistrate stands

wiped out today by the order in appeal. Under these circumstances, there is no justification whatsoever in refusing to refund the amount of fine to the petitioners.

4. This application is, therefore, allowed. The learned Magistrate is directed to refund the amount of fine to the petitioners as deposited by them in criminal case No. 3527 of 1979 on 14-6-1983. Rule is accordingly made absolute.