
(1967) 01 GUJ CK 0011
In the Gujarat High Court

Babulal Chhaganlal Barot

APPELLANT

Vs

The State of Gujarat

RESPONDENT

Date of Decision : 11-01-1967

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 161, 161
Penal Code, 1860 (IPC) — Section 179, 179

Citation : (1968) 9 GLR 187

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

Bench : Single Bench

Judgement

N.G. Shelat, J.—This application in revision arises out of an order passed on 30th June 1965 by Mr. S.C. Bhatt, Judicial Magistrate, First Class, Vijapur, in Summary Case No. 414 of 1965, whereby the accused-applicant came to be convicted and sentenced to pay a fine of Rs. 10/- or, in default, to suffer simple imprisonment for three days for an offence u/s 179 of the Indian Penal Code.

2. The facts of the case are quite simple. One application Ex. 7 purported to have been signed by four persons including Babulal Chhaganlal, the accused-applicant, was received by the Hon'ble Home Minister of the State of Gujarat, Ahmedabad, and the copies thereof were sent to the D.S.P. District Mehsana, as also to the Hon'ble Minister for Agriculture, State of Gujarat at Ahmedabad. That application was then forwarded by the Home and Civil Supplies Department to the D.S.P. Mehsana, who in turn by letter dated 4-5-65 sent it on to the P.S.I. Vijapur, asking him to return that original application together with his report within 10 days. The P.S.I. Shri Mehta then gave that application to the Police Head Constable Sardarsing for making a report in respect of that application within 7 days. On receiving the same on 9-5-65. he called the applicant-accused at the police station with a view to inquire from him about that application. On being asked by him as to whether he had made that application Ex. 7, the applicant-accused replied that he had nothing to say about the application. That led the P.S.I. Vijapur to lodge the complaint Ex. 1 in the Court of the Judicial Magistrate, First Class at Vijapur on 12-5-65 u/s 179 of the Indian Penal Code inasmuch as

he refused to give any answer when he was asked about the application Ex. 7 shown to him on 9-5-65.

3. The complaint was explained to the accused by the learned Magistrate and to that he pleaded not guilty. In his statement that came to be recorded, he said that it was true that he was called by the Jamadar on 9-5-65 for making some inquiry in respect of an application Ex. 7, but with regard to the question as to whether he did not give any reply when he was asked as to whether he had signed the application Ex. 7, he stated that that part of the evidence was not true.

4. The learned Magistrate accepted the evidence of the Jamadar Sardarsing and found that the Jamadar had the power to make that inquiry and put questions to the accused in relation to the application Ex. 7 shown to him, and that since the accused had refused to give any reply, he was guilty of an offence u/s 179 of the Indian Penal Code and thus he convicted and sentenced him as stated hereabove. Feeling dissatisfied with that order, the accused has come in revision before this Court.

5. It was urged by Mr. Patel, the learned advocate for the applicant, that the prosecution has failed to show by any material evidence that the Head Constable Sardarsing was acting in the exercise of his legal powers as such public servant, and that even if that were taken for granted, there is hardly anything to show that the accused was legally bound to state the truth on the subject-matter contained in the application to that Head Constable so that on his refusal to give any reply, he can be held liable for this offence. In support of his contention, he referred to a decision in the case of Queen-Empress v. Sankaralinga Kope and Anr. ILR 25 Mad 544. This would require me to set out Section 179 of the Indian Penal Code in respect of which he has been convicted. It runs thus:

Whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him touching that subject by such public servant in the exercise of the legal powers of such public servant, shall be punished....

It follows therefrom that before the accused could be convicted in respect of this offence, the prosecution has to establish that the Police Head Constable Sardarsing who was public servant, had asked the question in relation to the application Ex. 7 in exercise of his legal powers, and that the accused was legally bound to state the truth on any question demanded of him touching the subject by any such public servant. On the evidence as it stands, as found by the learned Magistrate, we can take it that the Head Constable had called the accused at the police station with a view to inquire from him as to whether he had put his signature on the application Ex. 7 and that he refused to give any reply in relation thereto. We have, therefore, to consider as to whether the two ingredients referred to hereabove, before the accused can be held liable for the offence u/s 179, are established beyond any reasonable doubt.

6. The first point that requires to be considered is as to whether the Head Constable Sardarsing acted in the exercise of his legal powers in calling upon the accused to answer certain questions relating to that application Ex. 7. That would require us to turn to the provisions contained in the Criminal Procedure Code which authorise such a police officer to exercise those powers. Be it said here, that when asked in cross-examination as to under what provision of law he had called the accused for a statement, he could not say. Even the learned Magistrate has said that those powers were not sought to be exercised by him as a police officer u/s 161 of the Criminal Procedure Code. Since, however, it was not possible to lay any finger at a particular provision, the learned Magistrate thought, as observed by him, that "it was a miscellaneous inquiry and solely within legal powers of the police officers." He has then observed that "if any person refuses to give reply, or gives irrelevant reply to the question put to him by such police officer, then there would be no progress to any further inquiry and, therefore, he was legally bound to state the truth and since he refused to give reply he was guilty u/s 179 of the Indian Penal Code." We may, however, first examine as to whether the Head Constable who was asked to make an inquiry in respect of that application by the P.S.I. of the Vijapur Police Station, was acting under any of the provisions contained in Chapter XIV of the Criminal Procedure Code. Section 161 contained in that Chapter of the Criminal Procedure Code relates to the examination of witnesses by any police officer. Sub-section (1) thereof provides that any police-officer making an investigation under this Chapter or any police-officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case. Then Sub-section (2) says that such person shall be bound to answer all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture. Thus, he must be a police officer making an investigation under this Chapter and it is in respect of that investigation that he, must have examined orally any person supposed to be acquainted with the facts and circumstances of the case.

7. Now, in the case before us, there is hardly anything which can justify us to say that it was in pursuance of making an investigation of any such case under this Chapter that this accused was called and questioned with regard to the application Ex. 7. The term "investigation" has been defined u/s 4(1) Clause (c) of the Code as "including all the proceedings under this Code for the collection of evidence conducted by a police-officer or by any person who is authorised by a Magistrate in this behalf. " He has, therefore, to be collecting evidence in respect of some proceeding under this Code and before he can avail of the provisions contained in Section 161 of the Code, that investigation must be under Chapter XIV of the Code. Now this Chapter contains Sections 154 to 176. Section 154 relates to information relating to the commission of a cognizable offence and if any such information is given to an officer in charge of a police-station, it has to

be reduced to writing and the substance thereof has to be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf. When such an information in respect of a cognizable offence has been received, after following that procedure, he would be entitled to investigate the same u/s 156 of the Criminal Procedure Code. In respect of a non-cognizable case no police officer is entitled to investigate without obtaining the order of a Magistrate u/s 155 of the Criminal Procedure Code. Then another section under which a police officer would have an authority to investigate would be as contemplated u/s 157 which relates to the procedure where cognizable offence is suspected. That has not been the case here and we need not refer to the provisions relating thereto. Thus, it would be only u/s 160 of the Criminal Procedure Code that any police officer making an investigation under this Chapter can make an order in writing requiring the attendance before himself of any person being within the limits of his own or any adjoining station, who, from the information given or otherwise, appears to be acquainted with the circumstances of the case; and such person shall attend as so required. It is then that as contemplated u/s 161 he can orally examine that person and that person would be bound to answer all questions relating to such a case as required under Sub-section (2) of Section 161. Under Sub-section (3) thereof, the police-officer may reduce into writing any statement made to him in the course of an examination under this section, and if he does so he shall make a separate record of the statement, of each such person whose statement he records. Now if we turn to the application itself, as already pointed out hereabove, it was given to him for inquiry and report by the P.S.I. Vijapur since that was received by him from the D.S.P. Mehsana. In respect of information contained in that application relating to any cognizable offence, the procedure contemplated u/s 154 was not at all followed and no offence was as such registered in respect of which an investigation was to be carried on. The application Ex. 7 relates to the house of one Lalbhai who has been serving in the Agriculture, Department, having caught fire and the signatories thereof have suggested for making some inquiry as to how and who had set fire to that house. It has then stated that some surprising information as it was in the Rasila Murder case would be found if inquiry were entrusted to the C.I.D. Then it refers to some other things with regard to the conduct of that Lalbhai with which we may not be concerned. At any rate, it is abundantly clear that no where any such offence was registered and the inquiry was, as the complaint Ex. 1 clearly indicates, in respect of the fact as to whether the accused had put his signature below that application Ex. 7. It cannot, therefore, be said that this Jamadar even on the assumption that he was authorised to investigate into a cognizable offence under Chapter XIV of the Criminal Procedure Code, was in fact making an investigation under the said Chapter so as to call the accused at the police station for answering questions relating to such case put to him by such public servant such as the Head Constable Sardarsing as contemplated under Sections 160 and 161 of the Criminal Procedure Code.

8. Even Mr. Nanavati, the learned Assistant Govt. Pleader, though at first tried to say that he was acting u/s 161 of the Criminal Procedure Code, finding it that even on that basis, his liability to tell the truth would not arise and that way cannot be held liable for an offence u/s 179 of the Indian Penal Code, had later on to say that he would not lay stress on that aspect and he then sought to put reliance under Sections 174 and 175 of the Criminal Procedure Code. Before going to that aspect of the case, one would consider as to whether the accused was legally bound to state the truth in respect of any question put to him by such public servant so as to be liable u/s 179 of the Indian Penal Code.

9. I would refer to the Madras Case relied upon by Mr. Patel on that point. But apart from that case, Section 161(2) of the Criminal Procedure Code only says that he was bound to answer all questions relating to such case, and does not say that he was bound to tell truth about the same. Section 179 of the Indian Penal Code punishes a person being legally bound to state truth to any public servant and not a person refusing to answer any question put to him by public servant acting u/s 161 of the Criminal Procedure Code. To him the accused was not bound to state the truth. It was held in the Madras Case referred to above, that a refusal to answer questions asked by a police officer u/s 161 of the Criminal Procedure Code is not punishable under Sections 176, 179 and 187 of the Indian Penal Code. It is therefore clear that in any view of the matter, the accused cannot be held liable u/s 179 of the Indian Penal Code.

9.1 Mr. Nanavati referred to Section 174(1)(b) and urged that this application Ex. 7 related to an information about some person having been killed by another by setting fire in the house of Patel Lalbhai referred to in the application and that therefore, the Head Constable on receipt of that information was investigating into the same. He then referred to Section 175 Sub-section (1) of the Criminal Procedure Code to say that since he was proceeding u/s 174, he was entitled to pass an order in writing summoning two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case. That sub-section further says that every person so summoned shall be bound to attend and to answer truly all questions other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture. On this basis, it was said that this accused was called by the Head Constable while he was making an investigation in respect of this offence falling under Chapter XIV and that the accused was not only bound to attend his office but to answer truly all questions put to him relating to such offence. Since he failed to do so, he can be held liable u/s 179 of the Indian Penal Code. Now, before Section 175 comes into operation, as provided therein a police officer must have been proceeding u/s 174 of Criminal Procedure Code. Turning, therefore, to Section 174, we have first to see as to whether this Head Constable was in charge of a police station or that he was a police officer specially empowered by the State Government in that behalf, and secondly as to whether the information contained in that application Ex. 7 related to any person killed by some other person...or by an accident. If these

two conditions are fulfilled, then something more is required to be done by him, viz., about his having to immediately give information thereof to the nearest Magistrate empowered to hold inquests and, unless otherwise directed by any rule prescribed by the State Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds etc. Neither the evidence of Sardarsing nor that of Mr. Mehta, the P.S.I., of Vijapur police station says that this Head Constable was in charge of the police station at that point of time. Nor is there any evidence to suggest much less show that he was specially empowered by the State Government to investigate this matter. All that appears from the evidence on record is that this application was received by the D. S. P. Mehsana from the Home and Civil Supplies Department and that he had forwarded the same to the P.S.I. Vijapur where the inquiry in respect of the application was to be made. The P.S.I., had in turn given this application Ex. 7 to the Head Constable Sardarsing asking him to make an inquiry and report about it within seven days. At any rate, it does not show that this Sardarsing was the officer in charge of the police station or was a police officer specially empowered in that behalf. The mere fact that he was asked by the P.S.I., to make some inquiry and submit his report would not make him an officer in charge of police station much less a police officer specially empowered for making an inquiry by the State Government. Turning to the application itself, there is hardly any clear indication to show that any person was lying dead in the house of that Lalbhai Patel either by reason of his having been killed or met his death by an accident so as to invoke the aid of the provisions contained in Section 174(1) of the Code. All that it relates, as pointed out hereabove, is about fire having been set to or in the house of Lalbhai. The inquiry sought for by the signatories thereto was in respect of as to who and in what manner the fire was set to that house. A reference to something surprising will be found as was found in the Rasila Murder case Mehsana cannot lead us necessarily to think that any person had met his death either by an accident or by reason of his having been killed by another person. It is, thus, too much for the learned Assistant Government Pleader to expand the scope of his argument so as to clothe the Head Constable Sardarsing with an authority to investigate in respect of any such offence wherein some person is found to have been killed by another person or by accident by reason of the fire set to the house. As to when such an incident had taken place we find no indication thereof in the application. It was, thus, clearly not a matter which was taken up for investigation by the police officer such as the Head Constable u/s 174 of the Criminal Procedure Code and consequently the prosecution cannot put its finger on Section 175 for the purpose of saying that the Head Constable was investigating into an offence under this Chapter and that it was in connection with that investigation that the accused was called and that he was further bound to answer all questions truly so as to make him liable u/s 179 of the Indian Penal Code.

10. In any view of the case therefore, the order passed by the learned Magistrate cannot be sustained. The order of conviction and sentence passed against the accused-applicant is, therefore, set aside. He is acquitted.