

(2001) 07 GUJ CK 0016

In the Gujarat High Court

Case No : Criminal Revision Application No. 100 of 2001

Chandrakant Keshavlal Shah

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 01-07-2001

Acts Referred:

Citation : (2001) 07 GUJ CK 0016

Hon'ble Judges : D.C. Srivastava, J

Bench : Single Bench

Advocate : B.S. Patel and Ranjan B. Patel, in Criminal Revision application No. 100 of 2001, for the Appellant; H.H. Patel, Public Prosecutor for Respondent No. 1 and Satish R. Patel, in Criminal Revision Application No. 100 of 2001, for the Respondent

Final Decision : Allowed

Judgement

D.C. Srivastava, J.—The order dated 2-3-2001 of Additional Sessions Judge, Vadodara passed in Criminal Revision Application No.19/2001 is under challenge in this revision.

2. The instant revision has been filed under the following circumstances :

A complaint was filed against 18 persons named as accused. Surajben was the complainant. On this complaint, an order was passed by the Chief Judicial Magistrate, Vadodara on 14-11-2000 under sec.156(3) of the Code of Criminal Procedure, directing investigation to be made on the complaint by Gorva Police Station. On plain reading of the complaint, the Chief Judicial Magistrate found that, it appeared that mischief has been played with the documentary evidence, and if, police investigation is carried out for the same, necessary documents are required to be seized and thorough investigation is necessary. The complaint was under sections 420, 465, 466, 446, 468, 471, 506(2), 120(B) and 114 of the Indian Penal Code. It appears from the record that one of the accused Chandrakant Keshavlal Shah, on receipt of information from the police station,

moved an application before the Chief Judicial Magistrate annexing necessary documents and intimating that there has been no forgery in the Will and that Probate of the Will was obtained on 7-8-1992 and the matter was confirmed up to the Apex Court. It was also intimated that Regular Civil Suit No.48/99 was also filed in respect of the Will, which fact was also suppressed by the complainant, so also the judgment of the Apex Court. The same Will was under consideration in S.C.A. No.7224/96 filed against the State of Gujarat in this Court and the judgment of this Court was confirmed by the Apex Court. This fact was also suppressed by the complainant and all these suppression of facts were made intentionally. It was, therefore, requested that the order to make police investigation under sec.156(3) of the Code be recalled. On 15-2-2001, the Chief Judicial Magistrate considered all the documents alongwith the list submitted by the applicant, accused and observed that the complainant had suppressed the facts that the competent civil Court had granted the Probate Application on merits by deciding the rights of the parties. He, therefore, recalled the order for police investigation on the ground that the Court was kept in dark by the complainant. Criminal Revision Application No.19/2001 was filed against the order dated 15-2-2001 of the Chief Judicial Magistrate, Vadodara, which was allowed by the Additional Sessions Judge, Vadodara, whose order is under challenge in this revision.

3. Shri BS Patel, learned counsel for the revisionist, Shri Satish Patel, learned counsel for the respondent no.3 and Shri HH Patel, learned APP for the respondent nos.1 & 2 were heard.

4. After hearing the arguments of the learned counsel for the parties, I am of the view that the impugned order is illegal and contrary to law, hence, it can not be sustained. Shri SR Patel, learned counsel for the respondent no.3 had drawn my attention to sec.156(3) of the Code of Criminal Procedure and urged that the impugned order under revision has been passed keeping in view the scheme of sec.156(3) of the Code, hence, the revision requires to be dismissed. The same argument was adopted by Shri HH Patel, learned APP for the respondent nos.1 & 2. I do not find any substance in this argument. Sec.156(3) simply provides that, any Magistrate empowered under sec.190 may order such an investigation as above-mentioned. The words "as above-mentioned" had reference to sec.156(1) of the Code. It does not say that such order under sec.156(3) is a final order.

5. If a complaint was filed, the Chief Judicial Magistrate was to proceed in accordance with secs.190, 200, 202, 203 and 204 of the Code of Criminal Procedure. It appears from the record that the Magistrate had taken cognizance of the complaint under sec.190 of the Code. However, after looking to the complaint, he thought it proper that in view of allegation of forgery and mischief in the Will thorough police investigation is required, and as such, he passed an order under sec.156(3) of the Code. This order was passed keeping in view the provisions of sec.202(1) of the Code of Criminal Procedure. It is not indicated from the order dated 14-11-2000 that either the complainant or any witness was

examined by the Chief Judicial Magistrate as contemplated under sec.200 of the Code of Criminal Procedure. Without following the procedure prescribed under sec.200 of the Code of Criminal Procedure, the Magistrate could not have straightway passed the order under sec.156(3) of the Code. After complying with the provisions of sec.200 of the Code, he could have issued process, and if he thought to postpone the issue of process against the accused, he could have inquired into the case himself or directed an investigation to be made by a police officer or by such other person as he thought fit for deciding, whether or not there is sufficient ground for proceeding. Sec.202(1) of the Code of Criminal Procedure is clear on the point. Thus, if any direction was given by the Chief Judicial Magistrate to the police to inquire into the matter, it can be said to be an order under sec.202(1) of the Code of Criminal Procedure, but such an order was passed without complying with the provisions of sec.200 of the Code.

6. Thereafter, the next stage is under sec.203 of the Code of Criminal Procedure when the Magistrate can dismiss the complaint. If, after considering the statement on oath of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under sec.202 of the Code, the Magistrate is of the opinion that there is no sufficient ground for proceeding, he shall dismissed the complaint and in every such case he shall briefly record his reasons for so doing. It is only an order under sec.203 of the Code which is called a final order. Proceedings taken under secs.200, 201 and 202 of the Code are proceedings of interlocutory nature and proceedings in aid of final order and final order may be an order for dismissal of complaint under sec.203 or an order for issuing process under sec.204 of the Code of Criminal Procedure. It is only these two orders under secs.203 and 204 of the Code which are called final orders which are amenable to revisional jurisdiction of the Sessions Judge or to concurrent revisional jurisdiction of the High Court. Any order passed under secs.200, 202 or 156(3) of the Code is nothing but interlocutory order. No revision against an interlocutory order could be entertained and decided by the Sessions Judge in view of the prohibition contained in sec.397(2) of the Code of Criminal Procedure, which provides that the powers of revision conferred by sub-sec(1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceedings. The impugned order recalling earlier order under sec.156(3) of the Code is nothing but interlocutory order passed during enquiry and such order could not be challenged in revision in view of bar created by sec.397(2) of the Code of Criminal Procedure.

7. If the order under sec.156(3) is an interlocutory order then the order recalling such order also becomes interlocutory order which can not be challenged in revision.

8. The next question is, whether the Chief Judicial Magistrate acted in accordance with law in recalling the earlier order passed under sec.156(3) of the Code or not. Shri Satish R.Patel contended that the order could not be recalled by the learned Chief Judicial Magistrate. I am unable to accept this contention for two

reasons. Firstly, there is no bar under sec.362 of the Code of Criminal Procedure in recalling an order passed by the Magistrate under sec.156(3) of the Code. Sec.362 of the Code provides that, save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error. Thus, what is prohibited under sec.362 of the Code is that, once a Court has signed its judgment or final order disposing of a case, it shall not alter or review the same except for correcting clerical or arithmetical error. An order to the Police to investigate under sec.156(3) of the Code is certainly not a judgment, nor it is a final order disposing of a case. Consequently, the bar under sec.352 of the Code is not at all attracted.

9. The second reason is that, if some order has been obtained by a party, may be the complainant, by suppression of material facts, the Court has inherent jurisdiction to recall such order. Shri BS Patel, learned counsel for the revisionist has relied upon a Division Bench's pronouncement in this Court in *M.H.LUHAR v. STATE* 1999(2) GLR 1679, in support of his contention. Shri Satish R.Patel contended that this judgment is not applicable to the facts of the case. Shri BS Patel has, however, relied upon this judgment only for a limited purpose, whether a Court can recall its judgments and orders or not. In para-10 page-1688, the Division Bench of this Court, placing reliance upon the Apex Court's verdict in *INDIAN BANK v. M/S.SATYAM FIBERS (INDIA) LTD.* JT 1996(7) SC 135, held that the authorities, be they Constitutional, Statutory or Administrative, possess the power to recall their judgments or orders, if they are obtained by fraud as fraud and justice never dwell together. The Apex Court in para-23 of this judgment observed that, where the Court is misled by a party or the Court itself commits a mistake which prejudices a party, the Court has the inherent power to recall its order.

10. In the case before me, suppression of material facts on the part of the complainant was highlighted in the application of one of the accused Chandrakant Keshavlal Shah moved on 1-1-2001. The Chief Judicial Magistrate in his order dated 15-2-2001 clearly observed, after considering the application of the accused alongwith the documents, that it establishes that the complainant has suppressed the facts that the competent civil Court has granted the Probate Application on merits by deciding the rights of the parties. In face of such observation regarding patent suppression of material facts, the Chief Judicial Magistrate was justified in recalling his earlier order dated 14-11-2000, and in doing so, he did not commit any illegality, nor such order was in violation of the provisions contained in sec.362 of the Code of Criminal Procedure.

11. Shri Satish R.Patel, learned counsel for the respondent no.3 contended that those documents on which suppression of facts is alleged have not been brought on record in this revision, hence, it can not be said that it was a case of intentional suppression of facts. I do not find much force in this contention. Suppression of facts was noticed by the Chief Judicial Magistrate from the

documents placed before him and that was sufficient justification for him to recall his earlier order dated 14-11-2000.

12. In view of the aforesaid discussions, I find that the Additional Sessions Judge committed grave illegality in observing that the learned Magistrate has no power to recall the police investigation papers and that he is having only alternative to initiate further proceeding in accordance with law on receipt of the charge sheet after the police investigation is over. If, the revision itself was not maintainable, the entire order passed by the Additional Sessions Judge is rendered illegal.

13. It may be noted that the Additional Sessions Judge did not take care of the fact that the revisionist herein who moved an application intimating that suppression of facts was done by the complainant was not even made a party in the revision. The respondent was only the State of Gujarat. None of the accused was made party to the revision. The revisionist had, therefore, no opportunity before the Additional Sessions Judge to point out what material suppression of facts was intentionally made by the complainant. If, opportunity would have been given to the revisionist, he would have been able to convince the Additional Sessions Judge that the order of the Chief Judicial Magistrate was justified.

14. It may also be mentioned that the documentary evidence annexed by the revisionist before the Chief Judicial Magistrate intimating in what manner material facts were intentionally suppressed by the complainant was also not considered by the Additional Sessions Judge.

15. It is also noteworthy that no final order on the complaint either dismissing it or issuing the process against the accused has so far been passed by the Chief Judicial Magistrate. He has also not proceeded in accordance with sec.200 of the Code of Criminal Procedure. Consequently, when the complaint is alive, it can not be said that the order of the Chief Judicial Magistrate recalling his earlier order under sec.156(3) of the Code of Criminal Procedure is final order. Consequently, this order could not be interfered with by the Additional Sessions Judge.

16. For the aforesaid reasons, the impugned order can not be sustained. The revision has, therefore, to be allowed and is hereby allowed. The order under revision is hereby quashed and set aside.