

(1977) 08 GUJ CK 0028
In the Gujarat High Court

Chinubhai Keshavlal Nanavati

APPELLANT

Vs

K.J. Mehta and Another

RESPONDENT

Date of Decision : 10-08-1977

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 345
Penal Code, 1860 (IPC) — Section 170, 175, 178, 179, 180

Citation : (1978) CriLJ 1040 : (1977) GLR 1022

Hon'ble Judges : Seshareddi Obul Reddi, C.J.;A.N. Surti, J

Bench : Division Bench

Judgement

S. Obul Reddi, C.J.—The question that arises in this Special Criminal Application is about its maintainability under Article 226 of the Constitution. The petitioner was convicted u/s 345 of the Code of Criminal Procedure, 1973, by a Commissioner appointed by the City Civil Court, Ahmedabad as he found that the petitioner was causing interruption to him in the discharge of his judicial functions. He was sentenced to a fine of Rs. 175/- and in default of payment of fine, to simple imprisonment for fifteen days.

2. The facts which compelled the Commissioner to take action u/s 345 of the Code of Criminal Procedure, 1973, against the petitioner are these. In judicial proceedings held by the Commissioner pursuant to a preliminary decree in a partition action, certain questions in cross-examination were put to the petitioner-defendant No. 1, who was a witness before the Commissioner, by the counsel appearing for the opposite side, The Commissioner noticed the petitioner answering the questions in an insulting manner and he was warned several times to behave properly and answer the questions, His answers to the Commissioner were very rude and insulting. His own advocate had asked him to behave properly but he paid no attention to his advice. The counsel cross-examining him appealed to the Commissioner to control the petitioner, but all attempts to control him failed. As he was behaving in an insulting manner, the Commissioner again repeated his warnings. When he was warned for the last time, the

petitioner became furious and half standing up on the chair, pointed Ms hands towards the Commissioner and told him that he may take not only contempt proceedings but may even hang him and he continued to insult the Commissioner and the advocate and interrupted the judicial proceedings before the Commissioner, The Commissioner, therefore, took action and convicted and sentenced him as stated above,

3. The question now is, whether on the facts the Commissioner was justified in convicting the petitioner u/s 345 of the Code of Criminal Procedure 1973, There are two provisions which require to be noticed on the facts of this case. One is Section 228 of the Indian Penal Code and the other is Section 345 of the Cole of Criminal Procedure 1973. Section 228 of the Indian Penal Code says -

228. Whoever intentionally offers any Insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Section 345 of the Code of Criminal Procedure, 1973, prescribes the procedure in certain cases of contempt and this Section reads-

345. (1) When any such offence as is described in Section 175, Section 178, Section 179, Section 180 or Section 228 of the Indian Penal Code is committed in the view or presence of any Civil, Criminal or Revenue Court, the Court may cause the offender to be detained in custody and may, at any time before the rising of the Court on the same day, take cognizance of the offence and after giving the offender a reasonable opportunity of showing cause why he should not be punished under this Section, sentence the offender to fine not exceeding two hundred rupees, and, in default of payment of fine, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

(2) In every such case the Court shall record the facts constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence.

(3) If the offence is u/s 228 of the Indian Penal Code, the record shall show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult.

The difference between the two Sections is this. While Section 345 of the Code of Criminal Procedure empowers a Civil, Criminal or Revenue Court to take action when an offence described in Section 175, 178, 179, 180 or 228 of the Indian Penal Code is committed in its presence. Section 228 of the Indian Penal Code empowers any public servant to take action when a person intentionally offers insult or causes interruption to him while he is sitting in any stage of a judicial proceeding. Section 345 empowers the Courts referred to therein to take action not only when offence is committed u/s 228 of the Indian Penal Code but also

under the other Sections referred to therein whereas the power conferred u/s 228 on a public servant is limited only to the extent that if any person offers insult or causes any interruption to him while he is sitting in any stage of a judicial proceeding, he can punish such person. The Commissioner comes within the definition of "public servant" as defined in Section 21 of the Indian Penal Code. While discharging his judicial functions if there is any interruption to the judicial proceeding or if anyone intentionally offers any insult in any stage of the judicial proceeding, he can only punish such person in the manner specified in Section 228.

4. Here is a case where the Commissioner found that the petitioner intentionally offered insult and caused interruption to his work while he was sitting in a judicial proceeding. It is for that reason that he proceeded to take action against him. The only error committed by the Commissioner in this case is to have recourse to Section 345 of the Code of Criminal Procedure. In our view the offence does not fall u/s 345 Criminal Procedure Code but falls u/s 228 of the Indian Penal Code. It is a technical error committed by the Commissioner. The proper course for the petitioner was to move a competent Criminal Court either in appeal or revision, as the case may be, and not to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution.

5. We are, therefore, not inclined to invoke our extraordinary jurisdiction In a case of this nature. The petition is, therefore, rejected as not maintainable.

6. Mr. Padia made an oral application for leave to appeal to the Supreme Court. We are unable to certify that this is a fit case for granting leave to appeal to the Supreme Court. Oral application is accordingly rejected.