
(1979) 03 GUJ CK 0006
In the Gujarat High Court

Deepak Dwarkadas Patel and Another	APPELLANT
Vs	
State of Gujarat	RESPONDENT

Date of Decision : 23-03-1979

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 482
Penal Code, 1860 (IPC) — Section 114, 165, 201, 417, 420

Citation : (1980) CriLJ 29 : (1980) GLR 135

Hon'ble Judges : N.H. Bhatt, J

Bench : Single Bench

Judgement

N.H. Bhatt, J.—This petition raises an interesting and important question regarding the interpretation of Clause (8) of Section 173 of the Cr. P. C., 1973.

2. A few facts require to be stated:

On 12-9-1977, one Mr. p. J. Sheth, one of the engineers of the Gujarat Electricity Board lodged a first information report with Sabarmati Police Station alleging offences under Sections 417, 420, 165, 468, 471, 201 and 114 of the I.P.C. The allegation was that some capacitors rejected initially were sold to the Board because they were accompanied by the certificates of fitness which were ultimately found to be forged, In the F. I. R. these petitioners, the proprietors of one concern were said to be the persons responsible for that forgery for the purpose of cheating the Gujarat Electricity Board. The P. S. I. Mr. Gadhavi attached to the Sabarmati Police Station conducted the investigation and submitted the charge-sheet u/s 173 of the Cr. P. C. Mr. Gadhavi, however, mentioned these two persons as witnesses in the case and im-pleaded five persons as the accused. The learned Magistrate started examining the case for the purpose of deciding what charge should be framed and at that stage, the Public Prosecutor incharge of the State orally mentioned before the learned Magistrate that these two petitioners who were initially named as the accused in the first information report and who were cited as witnesses were in fact, in his opinion, the accused. It seems that the matter stood adjourned on that day, but

the accused apprehended that perhaps under the advice of the Public Prosecutor in charge of the case in the learned Magistrate's Court, they might be harassed by being arrested, and so they sought from the Sessions Court, Ahmedabad anticipatory bail. It seems a notice was issued to the Police Officer Mr. Gadhavi who declared before the learned Sessions Judge that he did not contemplate any such arrest. That application for anticipatory bail was, therefore, not pressed.

3. It seems that then the wheels moved and PSI Mr. Gadhavi under the orders of his superiors submitted an additional charge-sheet seeking to delete the petitioners from the list of witnesses in the column of the earlier charge-sheet and prayed for their being impleaded as (the accused. The learned Magistrate has accepted the charge-sheet. The original, petitioners have, therefore, moved this Court by challenging the submission of that additional charge-sheet and its; entertainment by the learned Magistrate on the ground that the Police Station Officer had no such authority at law to submit an additional charge-sheet once-the charge-sheet u/s 173 of the Cr. P. C. was filed.

4. Mr. H.K. Thakore, the learned Advocate for the petitioners took me-through the history of the earlier similar provisions in the Code of 1898 and compared those provisions with the present provision of Section 173 and urged that after-submitting a charge-sheet a police officer ordinarily becomes functus officio. He, however, submitted that by virtue of the newly added Sub-section (8) the power-was reserved for the police station officer-to submit an additional charge-sheet. But Mr. Thakore urged that this power was hedged and in his submission the hedge was the discovery of some new material as the result of further investigation. His insistence was that an additional charge-sheet could be submitted by a Police Station Officer if and only if there was. further investigation in the course of" which some further evidence oral or documentary was available which necessitated the involvement of some more person or persons.

5. I am not in a position to concede to the stand taken by Mr. Thakore. AIL that newly added Clause (8) mentions is what was impliedly understood before the provisions of the new Cr. P. C. came to-be enacted. There were reported cases-speaking of such controversy being raised and the legislature while making : this new law made a provision to set at rest the earlier controversy that once a charge-sheet was filed a Police Officer became functus officio. An enabling, provision in the form of Section 173(8) is, therefore, inserted. Ordinarily conceivable occasion for an additional charge-sheet would be the disclosure of some new-material and so, while acknowledging and recognising the police officer's right to submit a fresh charge-sheet those conceivable circumstances are put on the statute. However, those circumstances are enumerative and not exhaustive in character. If the very material is misunderstood by the Police Station Officer and if he has received proper light from his superiors he can certainly file an additional charge-sheet though there may not be strictly speaking the further investigation and collection of new material. In such a case instead of new material there is new light that is received by him. In my view,

therefore, Clause (8) is inserted as a new provision so that it may not be contended that on the submission of a charge-sheet investigation came to a standstill and the hands of the Police Officers are tied down. The circumstances which are only usual are enumerated there in the sub-section, but as I said above, if the new interpretation of the evidence is brought to his notice, the powers on the investigation officer cannot be curbed down because of the enumeration of those circumstances of the recovery or discovery of the new material.

6. Mr. Thakore, however, in this connection urges that if this wider interpretation is placed on Sub-section (8) Police Officers may go on harassing the citizens. The apprehension is not well-founded. If the police officers are out to harass, this is not the only conceivable weapon with them. Moreover, we cannot start with a presumption that this statutory power which is recognised by Sub-section (8) would be in all probabilities abused. Even if such a power is abused the law is not helpless and proper remedies are there in the legal armour to arrest this propensity.

7. Mr. Thakore then urged that on the evidentiary material as it stands on .the record submitted to the Court u/s 173 of the Cr. P. C. the charge against the accused is groundless and would be tantamount to abuse of the process of the Court. In case instituted on police report, the Magistrate is required to apply his mind at the outset in order to find out whether there is a prima facie case to frame the charge. The accused can well bring this state of affairs to the notice of the learned Magistrate and seek their discharge forthwith. However, if at that stage there is denial of justice, the powers of this High Court are always there for enabling the aggrieved citizen. They may invoke the powers of the High Court u/ s 482 of the Cr. P. C. In the above view of the matter, I reject this application. Rule is accordingly discharged.