

(1984) 03 GUJ CK 0010
In the Gujarat High Court

Gopalbhai Parshot Tamdas Chauhan

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 13-03-1984

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 248(2), 360, 361

Motor Vehicles Act, 1988 — Section 116

Penal Code, 1860 (IPC) — Section 279, 279, 304A, 304A, 337

Citation : (1984) 2 GLR 1470

Hon'ble Judges : V.V. Bedarkar, J

Bench : Single Bench

Judgement

V.V. Bedarkar, J.—In this petition the petitioner is convicted for the offences punishable under Sections 279, 337, 338, 304-A of the Indian Penal Code, and sentenced to undergo rigorous imprisonment for 7 days and fine of Rs. 50, 7 days and fine of Rs. 50, 15 days and fine of Rs. 100 and 30 days and fine of Rs. 250/- respectively for each of the aforesaid offences and for every default of fine, 10 days further R. I. Though he was also convicted for the offences under Sections 112 and 116 of the Motor Vehicles Act, no separate sentence was awarded for the said offences. This order of conviction and sentence was passed by the learned Judicial Magistrate, First Class, 3rd Court, Narol, in Criminal Case No. 2881 of 1982. Criminal Appeal No. 74 of 1983 filed by the petitioner-accused in the Sessions Court, Ahmedabad District (Rural) at Narol, was also dismissed. Hence this revision.

2. Having gone through the papers and judgments of the Courts below, it was found that the conviction of the petitioner was quite justified. Mr. Jayant M. Panchal, learned Advocate for the petitioner however, raised a point before me that this case having been heard as a warrant triable case, the learned Magistrate has not followed the provisions of Section 248(2) of the Code of Criminal Procedure 1973, (hereinafter referred to as "the Code") and, therefore, no opportunity was given to the accused to put forth his say about the sentence or for grant of benefit of probation under the Probation of Offenders Act, 1958,

or Section 360 of the Code. As this point was raised, rule was issued in this revision petition so far as legality of the order of sentence was concerned.

3. When the matter came up for hearing Mr. M. A. Trivedi, learned Public Prosecutor for the State, submitted that the offences are such as could be tried as summons case. Record and proceedings are before the Court. Having scanned the record and proceedings, it clearly transpires that the learned Magistrate conducted the case as warrant triable case. It is true that these offences are summons triable, but the learned Magistrate has proceeded with the case as a warrant triable case. Probably, he has exercised the jurisdiction vested in him u/s 259 of the Code wherein there is power of the Court to convert summons-cases into warrant cases. Even if it is either a summons-case or a summary-case, because u/s 262 of the Code procedure for summary trials specified, even for trial of summons case u/s 255(2) of the Code a Magistrate has to consider whether he proposes to proceed u/s 360 of the Code or not, and for that he shall have also to follow the provisions of Section 361 of the Code. At any rate, as this is a warrant triable case, this question does not arise in the instant case, but it is necessary that the Magistrate should be conscious of this provision even for a summons triable-case.

4. At any rate, this case having been conducted as warrant triable case, the learned Magistrate should have followed the procedure provided in sec 248(2) of the Code. Not only that, but in the final order of conviction the learned Magistrate has referred to the provisions of Section 248(2) of the Code but not followed fully. Section 248(2) of the Code reads:

248(2) Where, in any case under this Chapter, the Magistrate finds the accused guilty, but does not proceed in accordance with the provisions of Section 325 or Section 360, he shall, after hearing the accused on the question of sentence, pass sentence upon him according to law.

This provision clearly provides that after the Magistrate finds the accused guilty, but does not proceed in accordance with Section 360 of the Code, then he shall, after hearing the accused on the question of sentence, pass sentence upon him according to law.

5. Section 360 of the Code provides for the procedure for releasing on probation of good conduct or after admonition a person not under 21 years of age who is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, etc. Section 361 of the Code provides:

361. Where in any case the Court could have dealt with,

(a) an accused person u/s 360 or under the provisions of the Probation of Offenders Act, 1958, or

(b) a youthful offender under the Children Act....

but has not done so, it shall record in its judgment the special reasons for not

having done so.

Both these provisions are mandatory so far as warrant triable case is concerned. The learned Magistrate seems to be quite oblivious of this aspect.

6. I had an occasion to consider this aspect in case of Laxmansing Galabsing Khant v. The State of Gujarat Criminal Revision Application No. 329 of 1979, decided on 11-9-1979. In that case, rule was issued by D. P. Desai, J. He came to the conclusion that there was no merit in the case as there were two concurrent findings of facts based on believable evidence. But a ground was urged before him as to the legality of the order of sentence, and it was considered by him that that ground needed examination in view of the provisions of Section 248 (2) of the Code. He, therefore, admitted that revision petition on the question of legality of the order of sentence only. Thereafter, when the matter came up for final hearing before me, it was specifically observed by me after considering the provisions of Section 248(2) of the Code, that this section requires that first of all the Magistrate has to apply his mind whether the provisions of Section 360 of the Code are to be brought into action, and if not, then he has to make up his mind why he does not want to do so, because u/s 361 of the Code, if the learned Magistrate does not proceed u/s 360 or under the provisions of the Probation of Offenders Act, 1958, etc., then he shall record in his judgment the special reasons for having not done so. Therefore, in such a case difficulties would arise about the legality of the sentence. Firstly, the learned Magistrate has not considered whether he wanted to proceed u/s 360 of the Code; secondly, if not for what special reasons; and thirdly, he has not heard the accused on the question of sentence.

7. In the instant case before me, an argument is advanced by Mr. Panchal that if the question of sentence would have been put to the petitioner, the petitioner would have shown that he is a Government servant, he has 14 persons to maintain, he would be losing the job, and various other factors. All these things can be considered on proper evidence so that the Court could be prevailed upon to give him lesser sentence and, therefore, it is his request that the matter be sent back to the learned Magistrate. In my view, there is one more reason. If the Court could have considered all these aspects, then the trial Court would not have remained oblivious of the requirements of Section 248(2), Section 360 and Section 361 of the Code. Therefore, in order that the lower Magistracy may be mindful of these provisions, it is necessary that the matter should be sent back to the trial Court. In spite of the earlier judgment of this Court (decided by me and referred to above), of course, though unreported, it seems that many of the Magistrate do not adhere to the provisions of Section 248(2) of the Code and there-fore, at the stage of revision this difficulty arises.

In the result, therefore, the revision petition is allowed. Rule, is made absolute to the extent of sentence. The matter is remanded to the learned Judicial Magistrate, First Class, 3rd Court, Narol, Who will hear the accused on the point of sentence as required u/s 248(2) of the Code and pass necessary orders in

view of those provisions and the observations made above.