

(2008) 12 GUJ CK 0066
In the Gujarat High Court

Case No : Criminal Revision Application No. 203 of 1994

Gujarat Pollution Control Board

APPELLANT

Vs

Makwel and Others

RESPONDENT

Date of Decision : 24-12-2008

Acts Referred:

Air (Prevention and Control of Pollution) Act, 1981 — Section 19
Criminal Procedure Code, 1973 (CrPC) — Section 100[4], 482

Citation : (2008) 12 GUJ CK 0066

Hon'ble Judges : C.K. Buch, J

Bench : Single Bench

Advocate : B.R. Gupta, 1 and Sanjay R. Gupta, for the Appellant; A.Y. Pathan, for Respondents 1 - 4 and D.S. Pandit, Assistant Public Prosecutor for Respondent 5, for the Respondent

Final Decision : Dismissed

Judgement

C.K. Buch, J.—Learned counsel appearing for the petitioner, original complainant-Gujarat Pollution Control Board is not present when the matter is called out. This revision application could have been dismissed for want of prosecution, but instead of doing so, the Court is inclined to pass order on merit.

2. Grievance of the petitioner is that the learned Chief Metropolitan Magistrate, Ahmedabad has erroneously decided to discharge the accused of Criminal Case No. 397 of 1992 vide order under challenge dated 7th January, 1994 and thereby has terminated the proceeding of the case instituted. According to the petitioner, the order under challenge is contrary to law and the learned trial Judge has not considered all relevant aspects that are reflected in the contents of the application. The accused could not have been given any advantage of the procedural error even if committed in collecting the sample of polluted gas from the factory of the accused. While going through the record, more particularly, the order under challenge, following facts are emerging:

Accused was running a factory and from the area of the factory, sample of gas

was collected by one witness Minakshi during her visit to the factory of the applicant.

3. According to the learned trial Judge, there are two lacunae; namely, the prosecution was under obligation to produce notification published by the Government of Gujarat, more particularly as per Section 19 of Air Pollution [Prevention & Control] Act. It is claimed by the complainant that this notification was published in the official gazette, but the same was also required to be published in two reputed dailies having circulation in the pollution control area. No such evidence was tendered either directly or indirectly while instituting the complaint. The Court has observed that it is not satisfied that Ahmedabad City area was an area which can be said to be an area declared as air pollution control area.

4. It is also observed by the learned trial Judge about the second infirmity that sample was not drawn in presence of any independent person. So, it was contrary, in absence of any independent statutory rules, the scheme of Section 100(4) of the Code of Criminal Procedure. So, there was no scope for the prosecution to succeed and it is settled that when the Court is satisfied that on any circumstance, prosecution will not be able to bring about charge on account of material infirmity, even if the trial is conducted then, the accused can be discharged.

5. In number of such and similar cases, prosecutions are being terminated in exercise of powers vested in the High Court u/s 482 of the Code of Criminal Procedure. According to me, there is no merit in the revision. The order passed by the learned trial Judge does not appear to be either perverse or patently illegal and, therefore, the Revision is dismissed. Rule is discharged. Ms. D.S. Pandit, learned APP has nothing more to add.