

(1995) 04 GUJ CK 0008
In the Gujarat High Court

Gujarat Pollution Control Board

APPELLANT

Vs

Rushabh Industries

RESPONDENT

Date of Decision : 18-04-1995

Acts Referred:

Air (Prevention and Control of Pollution) Act, 1981 — Section 37, 37, 39, 39
Evidence Act, 1872 — Section 114(e)

Citation : (1995) 2 GLR 1082

Hon'ble Judges : K.J. Vaidya, J

Bench : Single Bench

Judgement

K.J. Vaidya, J.—This Criminal Revision Application, at the instance of the Gujarat Pollution Control Board, Gandhinagar, is directed against the impugned judgment and order dated 5th November, 1993 rendered in Criminal Case No. 1406 of 1991, passed by the learned Chief Metropolitan Magistrate, Ahmedabad, wherein the respondent - Rushabh Dye-Chem Industries, situated at G.I.D.C. Estate, Vatva, Ahmedabad, and two of its partners who came to be prosecuted for the alleged offences under Sections 37 and 39 of the Air (Prevention & Control of Pollution) Act, 1981, were ordered to be "discharged".

2. On going through the impugned judgment, it appears that the learned Magistrate has ordered discharge of the respondents mainly on two grounds, viz., that during the inquiry before framing of the charge when the complainant came to be examined on oath, he failed to produce on record firstly, the copy of notification in question dated 6th August, 1984 declaring Ahmedabad as a pollution controlled area, published in Government Gazette and secondly, two local daily newspapers publicizing the said notification.

2.1 Now, these two grounds, according to Mr. B.R. Gupta, the learned Advocate appearing for the petitioner-Board, being ex-facie unwarranted and illegal, the impugned order of discharge deserves to be quashed and set aside at once and the case be remanded to the trial Court to be disposed of on merits according to law, after framing the charge.

3. Having heard Mr. Gupta and the learned A.P.P.

Mr. J.A. Shelat, and taking into consideration the facts and circumstances of the case available at hand on record, the short but none-the-less important question that arises for consideration in this Criminal Revision Application is "Whether despite the fact that during the course of recording evidence for the limited purpose of "framing the charge", though the complainant did specifically state on oath that "Ahmedabad has been declared as a pollution controlled area" and that the said fact has been duly publicized in Government Gazette vide Notification dated 6-8-1984, and thereby further publicized in two local daily newspapers, merely because the copies of the said documents in question were not brought on the record the said inadvertent technical lapse at this stage of proceedings standing by itself can be said to be ipso facto fatal to the prosecution justifying the learned Magistrate to discharge the accused on the said solitary ground alone"?

4. Now on going through the impugned judgment, it appears that prior to the framing of charge, the complainant Dahyabhai Kalubhai had given evidence before the Court deposing to the effect that the Government of Gujarat had declared Ahmedabad as a pollution controlled area by a notification dated 6-8-1984 which was duly published in Government Gazette, as required under the Act and the rules made thereunder. Not only that but according to the complainant, the said notification was also further duly published in two local daily newspapers. It is of course true that at this stage of giving evidence for the purpose of framing the charge, the complainant in all probability quite inadvertently has failed to produce in support of his evidence the said notification in question dated 6-8-1984 and two local daily newspapers to which he has made reference in his evidence before the Court. But then this was hardly a stage and the ground upon which the accused can be summarily discharged especially when the complainant who is a statutory functionary on oath has in unmistakable terms deposed before the Court that the Government of Gujarat did declare on 6-8-1984 Ahmedabad as a pollution controlled area by publishing the notification in question in Government Gazette as well as giving due publicity to it in two local daily newspapers! Under the circumstances, ordinarily it was indeed not open to the learned Magistrate to doubt the veracity of the complainant on the said count, at this preliminary stage of framing charge! It is indeed too difficult to imagine even as to how and why the learned Magistrate became so obsessed and impatient with the notification and two daily newspapers in question not being brought on the record at this stage without giving a reasonable opportunity to the complainant (if indeed he had some lingering doubt in his mind about the said notification in question) to produce the same and thereby discharging the accused on that sole count at the back of the complainant!! And supposing the complainant was ultimately in position to produce and prove the said notification and copies of two daily newspapers in question on record at the time of trial, what indeed would be his remedy and the fate of public justice in the matter of offences under the Air Pollution Act? To

roam about, from the pillar to the post, that is to say from the trial Court to High Court and from the High Court back to the trial Court? Is this certainly not unnecessary and uncalled for, harsh and unjust punishment to the complainant and that too for the fault of impatience and indiscreetness on the part of the learned Magistrate? This simple question arises for the obvious two reasons, namely, that in the first instance it is simply inconceivable that ordinarily the complainant who is a responsible statutory functionary will even dare to state something false and that too on oath in a judicial proceedings before the Court contrary to the record and further that too about the notification in question issued by the Government, risking not only the prosecution for giving false evidence before the Court, but thereby also further risking his service career and prospects, unless of course bonafidely labouring under some wrong impression, he gave false evidence and in the second instance, in view of Section 114(e) of the Evidence Act enabling the Court to presume existence of certain facts pertaining to the official acts. The said Section 114(e) reads as under:

114. Court may presume existence of certain facts : The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public/private business, in their relation to the fact of the particular case.

Illustrations

The Court may presume-

(a) xx xx xx

(b) xx xx xx

(c) xx xx xx

(d) xx xx xx

(e) That judicial and official acts have been regularly performed;

Now, it is quite true that this presumption u/s 114(e) of the Evidence Act is not an absolute and irrebutable one and that the same can certainly be challenged and proved and/or probabalized to be not available and/or false!! For example, in the instant case, when the complainant asserted in his examination-in-chief about the notification and publication of the same in two local daily newspapers in question and yet if the learned Magistrate for whatever reasons had some lingering doubt regarding the said assertion then the same could and should have been set at rest by immediately calling upon the complainant to produce the same by speaking order. This could and should have been done by the learned Magistrate but not done!! Now, therefore, merely because the complainant failed to produce the notification and two daily newspapers in question at the time of recording evidence for the purpose of framing the charge it cannot be straightway assumed to the contrary to Section 114(e) of the Evidence Act where the ordinary presumption is available to the prosecuting

agency as regards the official act have been regularly performed! In fact, the alleged slip at particular stage of framing of the charge at the most demonstrates lack of requisite knowledge or desired care on the part, in the first instance either of the complainant in all probability not knowing the legal intricacies and technicalities as to how to give the fool-proof evidence before the Court even at the stage of framing charge and for that purpose not realizing the importance and consequences of not producing notification in question and the copies of two daily newspapers publicizing the said notification and in the second instance that of the learned Advocate appearing for the Pollution Board in not properly tuning up the complainant and impressing upon him the importance and necessity of producing the said two relevant documentary evidence in question at the time of giving evidence before the Court for framing the charge!! This is not surprising as it can happen in any case, when complainant not knowing procedure and requirements of law, about bringing on record and proving the documents in question upon which the prosecution case is based and further in turn not tuned up accordingly by his learned Advocate before the complainant steps in the witness-box!! But such an inadvertent natural slip at the time of mere framing the charge cannot be made to turtle the prosecution case whole-hog!! No doubt in a warrant-triable case instituted otherwise than on police report, it would have indeed been quite an ideal and therefore better for the complainant to also produce copies of the said notification and two daily newspapers in question at the time of his examination, however, merely because that was not done, the learned Magistrate ought not to have over-emphasized such a hyper technical procedural slip at the time of recording evidence which was for the limited purpose of framing the charge and that too in cases under the Social Welfare Legislation like Air Pollution. In this view of matter, in case for whatever reason, if the learned Magistrate was labouring under some right or wrong suspicion about the existence of the notification in question and its due publicity in two local daily newspapers then nothing certainly prevented him to direct and insist upon the complainant to produce the same on record for the purposes of satisfying his judicial conscience regarding their, in fact, existence and for doing this judicial exercise there is indeed no law which prohibits him. Accordingly, even after despite the learned Magistrate calling and insisting upon the complainant to produce the notification in question and its due publication in two daily newspapers if he still failed to produce the same, without any genuine reasonable explanation, it would certainly be open to the learned Magistrate to draw an adverse inference against him by passing the appropriate speaking order on the point. But that is altogether and entirely different thing and therefore, without calling upon the complainant to produce the notification and copy of two newspapers in question that is to say without doing this inevitable exercise at pre-trial stage, to straightway summarily discharge the accused who came to be prosecuted under no less an offence than the serious offence of air pollution, is quite unfair, apart being unjust and illegal, not only to the complainant and the persons who are victims of such air pollution but the same also in a way amounts to the gross disrespect to the sovereign will of the people as reflected in Air

Pollution Act and the Parliament which enacted it!! The Parliament has also in Section 37 of the Act prescribed the maximum as well as minimum penalty of one year and six months for the alleged breach/contravention of provisions of the Act. This speaks volumes about the importance and the gravity and seriousness of the pollution problem and the concern and anxiety entertained by the Parliament. Not only that but the learned Magistrate ought not to have been oblivious to the further fact that the alleged offences under Pollution Control Act are not only of the nature of continuing offences, continuously putting health/survival of the society in danger by subjecting it to various diseases but they are fast escalating practically out to gradually engulf the entire planet of ours!! In this view of the matter, bearing in mind in particular the avowed object of the Air Pollution Act, instant perilous consequences of Air Pollution and accordingly its urgent, strict and efficient enforcement, the learned Magistrate ought to have been quite conscious and considerate and accordingly ought not to have indiscreetly attached undue importance to some technical flaw even if it was there, making it a mountain of the molehill. The legislature, executive and the judiciary are ultimately three limbs of the same body, viz., State/Nation. These three different limbs are entrusted with different functions but the ultimate goal of all the three is one and the same, viz., maximum good of the maximum people. The way in which apparently the accused have been gifted away "discharge" is indeed something unprecedented! It requires to be observed that like any other citizen, rather more than that the learned Magistrate/Judge is also equally duty bound to uphold the honour and dignity of the law enacted by the Legislature. After enacting the law, the Parliament putting the implicit faith and trust in two law enforcing agencies, viz., the Executive Officers and the Courts, rests itself and accordingly, under such circumstances, if either of the two does not remain faithful in enforcing the law, then it is indeed a matter of very grave and serious concern which cannot be lightly countenanced!! Accordingly, any indifference to the object of the Act and casual enforcement of its provisions attaching undue importance to some technicalities is virtually disrespect to the said Law of the land and thereby quite possibly the contempt of the legislature, which has enacted the same! Can this be ever permitted?!! The remissness and lapse; if any, on the part of the Executive and/or Court in not respecting and enforcing the Law is indeed an offence quite graver and serious than the one committed by the accused polluting either the air or water!! The reason is if any citizen commits any breach of the provision of rule or law, there is an Act itself to take care to prosecute and get him punished at the hands of the Court. But if the Law Enforcing Agency itself falls short of its level of duty consciousness, starts conniving and not sincerely, honestly and efficiently enforcing the law, the "law" was bound to lose all its image, sharpness and respect and thereby its object would start losing ground. This is the worst of the kind accordingly and the most regrettable and reprehensible situation where a "Rule of Law" has the bleakest future to survive and serve the society bringing about end of the civilized culture of the human race! Accordingly, if for want of sufficient evidence accused are to be acquitted at the end of the trial that is entirely and altogether a different

thing, but to discharge the accused at the threshold of trial on a totally fanciful, unwarranted and technical ground like the one in the instant case where in fact the complainant in terms has deposed on oath that the Government did publish the notification on 6-8-1984 in Government Gazette which was duly publicized in two local daily newspapers, is simply embarrassing and shocking as such decision in all probability is capable enough in the first instance not only to shake the faith of people for whom such special beneficial statutes came to be enacted in potency of the Act to deliver goods, and in the second instance, in the administration of justice but in the third instance, the same in a way indirectly of course also encourages disrespect to the Law of the Land! If the executive and/or the Court have the least respect for the law why indeed the citizens should care for it? If the law is to be respected, the lead shall have to be taken first by the Law Enforcing Agencies, viz., the Executive and the Courts and then only, it has a moral and legal right to put accused in the dock and pass appropriate orders against him. Law gives freedom, protects freedom and delivers justice, provided indeed the Law itself enjoys that nursing, protection and freedom and is not waylaid and gagged on its way to goal! Thus, the Law is like a bird, it can move and fly and reach its destination at whatever height and distance even provided its two wings are properly functioning. Accordingly, when the Law is a bird, the Executives and the Judiciary are its two important wings with which it can achieve and reach the desired destination, if both these wings fully and truly co-operate! But if these wings even one of them do not function properly for whatever reasons, what indeed the "Law" alone can do? Eagle is indisputedly the king of birds but even this king of birds also with all its majesty glory to its name cannot do anything once either of its wings are clipped and/or for whatever reasons inflicted with some disease!! It is in this view of the matter that both the Executives and the Administration of Justice have to introspect, appreciate, understand, inter-act and be fully conscious of the respective role, activism and accountability in making "Rule of Law" success and deliver the desired social fruits.

5. In view of the aforesaid discussion, bearing in mind the most indiscreet manner in which the accused came to be discharged, there is indeed no alternative left with this Court but to at once quash and set aside the impugned judgment and order and remand this case to the learned Magistrate to decide the same on merits according to law after framing the charge.

This Court is indeed quite conscious of the fact that the present Criminal Revision Application is only at the "admission stage" and accordingly if the same was to be allowed and anything is to be decided against the respondent, "notice" is required to be issued to them in ordinary course. However, bearing in mind the gravity and seriousness of the alleged offences under the Air Pollution Act, the fanciful, and the indiscreet manner in which the respondent-accused came to be discharged practically on no ground, by no stretch of imagination, it can be said that such an indiscreet exercise of power at the very threshold of the trial vested any right whatsoever in the accused to defend the said patent lapse, illegal and

indiscreet act of the learned Magistrate to take shelter behind him and thereby indirectly support unjust and illegally earned discharge order!! In view of this peculiar facts and circumstances of the case, this Court feels that it is indeed not necessary at all to issue notice to the other side by mechanically applying the principles of natural justice, and that the matter can certainly be straightway remanded to the trial Court, without hearing the accused. Further, in such matters to issue notice/rule is time consuming process and many a times cases gather dust after issuance of the Rule and Notice and in the meantime the monster of pollution continuously goes on damaging the social interest. With this set of background in mind and further bearing in mind the fact that time, tide and pollution waits for none, it is indeed not necessary to issue the notice to the other side. Further, by remanding the cases to the trial Court, what this Court is doing is simply redressing the injustice done to the prosecution by permitting it to produce the notification and its due publication in two local daily newspapers in question. This was a right of the prosecution which is given back to it by this order which cannot be said in any way causing prejudice to the accused. At one stage this Court was also thinking of keeping the matter open by permitting the respondent to move this Court in case some thing remotely even was overlooked but then in view of the peculiar facts of this case, this Court do not find it necessary to do so.

6. In the result, this Criminal Revision Application is allowed. The impugned judgment and order is quashed and set aside. The matter is remanded to the trial Court to be decided on merits according to law. Taking into consideration the fact that the alleged offence is of the year 1991, the learned Magistrate is directed to hear and decide this case as expeditiously as possible, preferably on or before 31st December, 1995.