
(1963) 04 GUJ CK 0014
In the Gujarat High Court

Kamalashanker Bhuleshanker Dave

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 16-04-1963

Acts Referred:

COMPANIES ACT, 1956 — Section 240
Constitution of India, 1950 — Article 20, 226

Citation : (1963) CriLJ 611

Hon'ble Judges : Divan, J;Bakshi, J

Bench : Division Bench

Judgement

Divan, JJ.

1-8. * * * * * 9. In support of its case against accused No. 1, the prosecution led the evidence of Mr. J. C. Trivedi, Inquiry Officer; and the prosecution relied upon the two statements made by accused No. 1 before Mr. Trivedi. The first statement was made on February 9, 1952 and that statement is Ex. 43 on the record. The other statement was made on February 22, 1958 and that statement is Ex. 42 on the record. According to the prosecution, Ex. 42 contained certain statements of self-inculpatory nature and amounted to a confession on the part of accused No. 1. It was urged before us that Ex. 42 was made by accused No. 1 in the course of the inquiry conducted by Mr. J. C. Trivedi when the evidence was recorded on oath and. therefore, this statement, Ex. 42, was hit by the provisions of Article 20(3) of the Constitution of India. We will first deal with the legal aspect of this matter before considering the contents of Ex. 42. As is well known, Article 20(3) provides against testimonial compulsion and lays down that no person accused of any offence shall be compelled to be a witness against himself. It was urged before us that looking to the nature of the inquiry before Mr. J. C. Trivedi, there was a compulsion on accused No. 1 to make that statement before Mr. J. C. Trivedi and, therefore, we cannot take the contents of Ex. 42 into consideration as that document was the result of something which was done contrary to the provisions of Article 20(3) of the Constitution of India.

10. In order to appreciate this argument, it is necessary to bear in mind that the inquiry before Mr. Trivedi was u/s 43(1) of the Bombay Co-operative Societies Act, 1925. That section provides as follows:

43. (1) The Registrar may of his own motion by himself or by a person duly authorised by him in writing in this behalf hold an inquiry into the constitution, working and financial condition of a society.

The original order appointing either Mr. J. P. Parikh or Mr. J. C. Trivedi as the Inquiry Officer was not on record but at the request of the learned Counsel for the appellant we have allowed the original order, dated June 22, 1957 and the subsequent order, dated September 11, 1957, appointing Mr. J. C. Trivedi vice Mr. J. P. Parikh to be brought on record and the copies of these orders have been kept on the record of this case. The order, dated June 22, 1957, mentions that the appointing authority viz., the Assistant Registrar for Industrial Co-operatives, Baroda, had read the confidential letter of the Special Auditor, Co-operative Societies, regarding the working of this Society and also the letter of the Deputy Registrar for Industrial Co-operatives, Ahmedabad; and after setting out various details the order says as follows:

The above happenings call for an exhaustive inquiry and a detailed investigation into the affairs of the Haveli Vibhag Co-operative Forest Labourers' Society Ltd., Taluka Lunawada. Under the circumstances, I Shri N. R. Kolhe, Assistant Director of Small Industries and Assistant Registrar for Industrial Co-operatives, Baroda, hereby order an inquiry into the constitution, working and financial position of the Haveli Vibhag Cooperative Forest Labourers' Society Ltd., u/s 43(1) of the Bombay Co-operative Societies Act (VII of 1925), with special reference to the points noted above, and others that may come to notice of the Inquiry Officer during the course of Inquiry and on such other points which he deems necessary to investigate, with a view to bring to light the gross irregularities etc., if any, and also report cases of responsible persons which might be noticed by him,.

Then the order proceeds to appoint Mr. J. B. Parikh as the Inquiry Officer. The order, dated September 11, 1957, merely says that in partial modification of the earlier order, Mr. J. C. Trivedi was appointed Inquiry Officer vice Mr. J. P. Parikh to conduct the inquiry; and some directions were given to Mr. J. C. Trivedi in connection with the inquiry. Thus, the inquiry which was to be conducted by Mr. J. C. Trivedi was under the provisions of Section 43(1) of the Bombay Co-operative Societies Act and was not an inquiry into the offences alleged against accused No. 1. It was urged before us that in the inquiry before Mr. Trivedi, the accused was treated as a person against whom charges of criminal breach of trust and various other offences were made and, therefore, the inquiry before Mr. Trivedi was hit by the provisions of Article 20(3) of the Constitution. Mr. Bhatt on behalf of accused No. 1 orally applied before us that we should exercise the powers u/s 428, Cri. P. C. and that additional evidence should be recorded regarding what transpired in the course of the inquiry before Mr. Trivedi. We rejected that application because, in our opinion, no useful purpose would have

been served by having fresh evidence recorded in connection with what transpired before Mr. Trivedi in the course of the inquiry. The scope of the inquiry before Mr. Trivedi was restricted to the provisions of Section 43(1) of the Bombay Co-operative Societies Act, 1925 as shown by the order appointing him. If the order appointing Mr. Trivedi had purported to say anything more than what was warranted by the language of Section 43(1) of the said Act, then the appointment of Mr. Trivedi and his conduct of the inquiry were open to a challenge. But as the language of the order, as we have set out above, indicates the inquiry to be conducted by Mr. Trivedi was within the four corners of Section 43 (1) of the said Act and, therefore, there was no point in allowing additional evidence to be led as regards this particular aspect.

11. What is meant by testimonial compulsion in Article 20(3) of the Constitution has now been settled by an authoritative pronouncement of the Supreme Court in the case of *The State of Bombay Vs. Kathi Kalu Oghad and Others*, . There a Bench of 11 Judges of the Supreme Court considered the scope of Article 20(3) in all its various aspects and the majority judgment was delivered by Sinha, C, J. on behalf of himself, Imam, Gajendragadkar, Subba Rao, Wanchoo, Raghubar Dayal, Rajagopala Ayyangar and Mudholkar, JJ.; whereas the minority judgment was delivered by Das Gupta, J. on behalf of himself, Section K. Das and A. K. Sarkar, JJ. At page 1816 in para 16, after considering the various authorities the majority judgment laid down certain conclusions seriatim and in conclusion No. (7) it was laid down as follows:

(7) To bring the statement in question within the prohibition of Article 20(3), the person accused must have stood in the character of an accused person at the time he made the statement. It is not enough that he should become an accused, any time after the statement has been made.

12. Mr. Bhatt relied upon an earlier judgment of the Calcutta High Court in the case of *Collector of Customs and Others Vs. Calcutta Motor and Cycle Co. and Others*, and there it was held as follows:

Even if a man has been named as a person who has committed an offence, particularly by officials who are competent to launch a prosecution against him, he has been accused of an offence within the meaning of Article 20(3), and a situation has arisen in which he can claim protection against being compelled by a coercive process to furnish evidence against himself.

There what happened was that notices were issued u/s 171-A of the Sea Customs Act to certain persons to appear before certain customs officials and to produce certain documents. It appeared from the accusations made in the search warrants at the instance of the customs authorities and those made in one of the notices by the Customs authorities themselves, that the accusations of criminal offences could not be excluded; and it was held that the protection under Article 20(3), was available to the persons concerned. It was urged before us that the decision in *Collector of Customs and Others Vs. Calcutta Motor and Cycle Co. and*

Others, was not overruled by the decision of the Supreme Court in *The State of Bombay Vs. Kathi Kalu Oghad and Others*, . However, in each of such cases it is necessary to find out the scope of the proceedings in the course of which the statement was made in order to find out whether the protection of Article 20(3), is available to the person concerned when subsequently put up as an accused before a Court of law.

13. A similar point arose in the case of *Narayanlal Bansilal Vs. Maneck Phiroze Mistry and Another*, , in connection with certain inquiries which were instituted against one Narayanlal under the provisions of the Indian Companies Act. Narayanlal was looking after the business of M/s. Narayanlal Bansilal, who were the Managing Agents of Harinagar Sugar Mills Ltd., the company concerned; and an Inspector was appointed under the provisions of Section 138(iv) of the Indian Companies Act, 1913, to investigate into the affairs of the Company from the date of its incorporation and point out all irregularities and contraventions in respect of the provisions of the Indian Companies Act, 1913, or any other law In connection with this inquiry a petition under the provisions of Article 226 of the Constitution of India for the writs of Mandamus, Certiorari etc was made by Narayanlal to the High Court of Bombay and the petition was heard in, the first instance by K. T. Desai, J. (as he then was). In the course of that judgment, the provisions of the Indian Companies Act were considered and it was held that the inquiry before the Inspector was not hit by Article 20(3), . At p. 237, K. T. Desai, J, (as he then was) distinguished another case of the Calcutta High Court in *Calcutta Motor and Cycle Co. Vs. Collector of Customs and Others*, ; and a view was expressed by him that he was unable to agree with the reasoning of the Calcutta High Court on the scope and object of Article 20(3), of the Constitution. Reliance was placed by him on the judgment of *Maqbool Hussain Vs. The State of Bombay*, ; and the observations of Mukherjea, j. in the case of *S.A. Venkataraman Vs. The Union of India (UOI) and Another*, . In *S.A. Venkataraman Vs. The Union of India (UOI) and Another*, a distinction was pointed out between a fact finding inquiry and an investigation into an offence. There was an appeal against the decision of K. T. Desai, J. and the appeal was heard by Chagla C. J. and S. T. Desai, J, (as he then was) and the Appeal Court held as follows:

The accusation referred to in Art 20(3) of the Constitution of India is an accusation with reference to a criminal proceeding and, therefore, as an investigation held by an inspector appointed under the Companies Act, 1956, to investigate the affairs of a company, is not a criminal proceeding, Article 20(3), of the Constitution is not applicable to the provisions of Section 240(5) of the Companies Act, . 1956, under which there is an obligation upon the person examined to answer questions put to him and the possibility of these answers being used in evidence against him although the answers may be of an incriminating nature.

The decision of the appellate Court is also reported at *Narayanlal Bansilal Vs. Maneck Phiroze Mistry and Another*, . Against the decision of the Court of Appeal,

there was a further appeal to the Supreme Court; and the decision of the Supreme Court is reported at Raja Narayanlal Bansilal Vs. Maneck Phiroz Mistry and Another, . There the Supreme Court confirmed the decision of the Court of Appeal of the High Court of Bombay and it was held as follows:

Where a person is called upon u/s 240 of the Companies Act to give evidence and to produce documents, he cannot be said to be a person who is accused of any offence as required by Article 20(3), , and therefore the provisions of Section 240 do not offend against the fundamental rights guaranteed by Article 20(3), .

At the commencement of the enquiry and indeed throughout its proceedings there is no accused person, no accuser and no accusation against anyone that he has committed an offence. A general enquiry and investigation into the affairs of the company contemplated cannot be regarded as an investigation which starts with an accusation contemplated in Article 20(3), of the Constitution.

14. Applying the principles of Raja Narayanlal Bansilal Vs. Maneck Phiroz Mistry and Another, to the facts of the present case, it is clear that when the Assistant Registrar of Cooperative Societies directed an inquiry u/s 43 of the Co-operative Societies Act, there was no accuser and no accused person but there was merely a general inquiry and investigation into the affairs of the Co-operative Society. In view of the decision in Raja Narayanlal Bansilal Vs. Maneck Phiroz Mistry and Another, and also in view of the decision in The State of Bombay Vs. Kathi Kalu Oghad and Others, , we are unable to accept the contention of Collector of Customs and Others Vs. Calcutta Motor and Cycle Co. and Others, should be followed. In each case the Court before which this question arises has to consider the provisions of the statute under which the inquiry of investigation is held or is proposed to be held and then consider whether there was an accuser and an accused person or whether there was an investigation into the affairs and administration or financial condition of the particular body concerned. In our opinion, Section 43 of the Cooperative Societies Act does not contemplate any accuser or any accused person and, therefore, it cannot be said that the statement made by accused No. 1 in the course of the inquiry before Mr. Trivedi would be affected by the provisions of Article 20(3), of the Constitution of India.

* * * * 15-18. It was urged before us that if the contents of Ex. 42 are to be construed as materials against the accused, then the Court should read the document as a whole and not merely that portion of it which was self-inculpatory; and if Ex. 42 is read as a whole, then the effect of the admission in the earlier part of Ex. 42 is wiped out by the latter portion, where accused No. 1 told Mr. Trivedi that the sum of Rs. 80/- had in fact been paid to Rama Bhagji in accordance with Ex. 8 and as shown in the books of account of the Cooperative Society. It is true that there are several decisions both of the Privy Council and of the Supreme Court which state that whenever there is a statement amounting to an admission or to a confession, then the statement should be read as a whole. In this connection, taking up some of the authorities in a chronological order, as far back as in 1915 it was held by the Privy Council in the case of M. M. Essabhoj

v. M. Haridas AIR 1915 PC 2 , that it was permissible for a tribunal to accept part and reject the rest of any witness's testimony. But an admission in a pleading cannot be so dissected and if it is made subject to a condition, it must either be accepted subject to the condition or not accepted at all. Again in the case of AIR 1930 245 (Privy Council) , it was held by the Privy Council that if a statement is to be relied upon as an admission, the whole statement must be taken and merely a portion of the statement could not be utilized as constituting an admission. In the case of Hanumant Vs. The State of Madhya Pradesh, , it was held by the Supreme Court that an admission made by a person whether amounting to a confession or not cannot be split up and part of it used against him. An admission must be used either as a whole or not at all. At page 350, Mahajan, J. (as he then was), who delivered the judgment of the Supreme Court, put the proposition in these words:

It is settled law that an admission made by a person whether amounting to a confession or not cannot be split up and part of it used against him. An admission must be used either as a whole or not at all.

However, in the same volume of the AIR. there is another judgment of the Supreme Court, also delivered by Mahajan, J. and about a month later than the judgment of Hanumant's case Hanumant Vs. The State of Madhya Pradesh, in the case of Palvinder Kaur Vs. The State of Punjab (Rup Singh-Caveator), ; and there the Full Bench decision of the Allahabad High Court in the case of Balmakund Vs. Emperor, , was considered. In Palvinder Kaur Vs. The State of Punjab (Rup Singh-Caveator), the statement of the accused was the confession which was relied upon by the trial Court and the High Court; and dealing with this aspect the Supreme Court at page 357 stated as follows:

Not only was the High Court in error in treating the alleged confession of Palvinder as evidence in the case but it was further in error in accepting a part of it after finding that the rest of it was false. It said that the statement that the deceased took poison by mistake should be ruled out of consideration for the simple reason that if the deceased had taken poison by mistake the conduct of the parties would have been completely different, and that she would have then run to his side and raised a hue and cry and would have sent immediately for medical aid, that it was incredible that if the deceased had taken poison by mistake, his wife would have stood idly by and allowed him to die. The Court thus accepted the inculpatory part of that statement and rejected the exculpatory part. In doing so it contravened the well-accepted Rule regarding the use of confession and admission that this must either be accepted as a whole or rejected as a whole and that the Court is not competent to accept only the inculpatory part while rejecting the exculpatory part as inherently credible. Reference in this connection may be made to the observations of the Full Bench of the Allahabad High Court in Balmakund Vs. Emperor, with which observations we fully concur. The confession there comprised of two elements, (a) an account of how the accused killed the woman, and (b) an account of his reasons for doing

so, the former element being inculpatory and the latter exculpatory and the question referred to the Full Bench was : Can the Court, if it is of opinion that the inculpatory part commends belief and the exculpatory part is inherently incredible, act upon the former and refuse to act upon the latter? The answer to the reference was that where there is no other evidence to show affirmatively that any portion of the exculpatory element in the confession is false, the Court must accept or reject the confession as a whole and cannot accept only the inculpatory element while rejecting the exculpatory element as inherently incredible.

Thus, this passage from *Palvinder Kaur Vs. The State of Punjab (Rup Singh-Caveator)*, makes it clear that the Supreme Court fully approved of the principles laid down in *Balmakund Vs. Emperor*, and it also, by necessary implication, approved of the principle that if there is other evidence on the record to show affirmatively that any portion of the exculpatory part in the confession is false, the Court can accept the inculpatory part and reject the exculpatory part.

19. A reference to the original report *Balmakund Vs. Emperor*, , shows that the theory of inherent incredibility of the exculpatory part being a sufficient ground for rejection of the exculpatory part was rejected by the Full Bench of the Allahabad High Court. At p. 1013 (of ILR All): (at pp. 1 and 2 of AIR), the Full Bench has stated as follows:

We have had a large number of authorities quoted to us and an examination of them shows that they actually establish no more than this, that

(a) where there is other evidence, a portion of the confession may in the light of that evidence be rejected while acting upon the remainder with the other evidence;

(b) where there is no other evidence and the exculpatory element is not inherently incredible, the Court cannot accept the inculpatory element and reject the exculpatory element.

And after further discussion, at p. 1014 (of ILR All): (at p. 2 of AIR), it was held as follows:

In view of the fact that the two rules above stated have been applied during the last hundred years, without, so far as the reports show, any attempt to engraft on those two rules the exception in question, and in view of the extreme caution with which a confession must be weighed in every case and particularly in a case where there is no other evidence to bring home guilt to the accused, we do not think that it would be expedient now to introduce that exception.

And the question referred to the Full Bench was formulated as follows at p. 1012 (of ILR All): (at p. 1 of AIR):

Can the Court, if it is of opinion that the inculpatory part is inherently incredible, act upon the former and refuse to act upon the latter?

and it is with reference to this question that the Full Bench of the Allahabad High Court discussed the law as stated above. As the Allahabad High Court itself points out in the case of Balmakund Vs. Emperor, , there was no evidence bearing on the guilt of the accused other than the confession.

20. In our opinion, in the light of the judgment in Balmakund Vs. Emperor, as approved by the Supreme Court in Palvinder Kaur Vs. The State of Punjab (Rup Singh-Caveator), , it is open to a Court of law to accept the inculpatory part and reject the exculpatory part provided (a) there is other evidence on the record to show the falsity of the exculpatory part; and (b) besides the confession there are other materials on the record establishing or indicating the guilt of the accused. Thus the inculpatory part by itself cannot form the sole basis for conviction even if there are other materials on the record to show the falsity of the exculpatory part.