

(1970) 02 GUJ CK 0004
In the Gujarat High Court

Kansara Tribhovandas Jamnadas

APPELLANT

Vs

The State of Gujarat

RESPONDENT

Date of Decision : 12-02-1970

Acts Referred:

Penal Code, 1860 (IPC) — Section 406

Citation : (1971) CriLJ 299 : (1970) GLR 1015

Hon'ble Judges : D.A. Desai, J

Bench : Single Bench

Judgement

D.A. Desai, J.—One Zubeda Husain filed a criminal complaint at Dhoraji Police Station complaining that a big vessel described as "TAPELA" was given to one Jilubai Alimamad for use and he has committed criminal breach of trust in respect of the same. The Police Station Officer registered the offence u/s 406 of the Indian Penal Code and in the course of investigation recovered muddamal vessel from the shop of Kansara Tribhovandas Jamnadas. When the case came up before the Court after the charge-sheet was submitted, original complainant Zubeda and accused Jilubhai Alimamad submitted a statement on 7-7-69 indicating to the Court that they have mutually settled the dispute and have compounded the offence and composition may be recorded and the accused may be acquitted. This statement is at Exh. 7. On the very day that is on 7-7-69, the learned Magistrate accepted the statement compounding the offence and acquitted the accused. Simultaneously the learned Magistrate passed an order u/s 517 of the Criminal P.C., directing that the muddamal vessel be re. turned to the complainant. Before passing this Order, Kansara Tribhovandas Jamnadas from whose shop the muddamal vessel was attached was neither heard nor any notice was given to him. When Kansara Tribhovandas Jamnadas came to know of the order passed by the learned Magistrate u/s 517 of the Criminal P.C. , disposing of the muddamal property, he gave an application that the muddamal vessel was recovered from his possession and he was entitled to possession thereof and it could not have been disposed of without hearing him. The learned Magistrate rejected this application observing that as the order disposing of the muddamal

is already made by him, it is not open to him to review his own order. Being aggrieved by this order, Kansara Tribhovandas Jamnadas preferred Criminal Revision Application No. 32 of 19(i9 to the Court of the Additional Sessions Judge, Rajkot at Gondal. The learned Additional (Sessions Judge was of the opinion that the learned Magistrate was in error in passing the order for disposal of muddamal property with, out giving an opportunity to the person from whose possession it was recovered. The learned Additional Sessions Judge felt that while exercising the revisional jurisdiction, it was not open to him to pass a final order in the matter and therefore, he submitted the case to this Court u/s 438 of the Criminal Procedure Code. That is how the matter has come up before this Court.

2. When Kansara Tribhovandas Jamnadas preferred Criminal Revision Application against the order of the learned Magistrate, disposing of the muddamal property u/s 517 of the Criminal Procedure Code to the learned Additional Sessions Judge, the learned Additional Sessions Judge should have exercised jurisdiction u/s 520 of the Criminal Procedure Code which reads as under:?

520. Any Court of appeal, confirmation reference or revision may direct any order u/s 517, Section 518, or Section 519, passed by a Court subordinate thereto, to be stayed pending consideration by the former Court, and may modify, alter or annul such order and make any further orders that may be just.

3. A bare perusal of Section 520 of the Criminal Procedure Code would show that when the Court is called upon to exercise jurisdiction under the said section, it is open to the Court to pass final order in the matter. The words in Section 520 that "the Court of Appeal, confirmation, reference or revision may modify, alter or annul such order and make any further orders that may be just." Leave no room for doubt that the Court exercising revision jurisdiction against the order made u/s 517 of the Criminal Procedure Code by subordinate Court, has final powers to dispose of the matter u/s 520 and it is not necessary for that Court to resort to Section 438 of the Criminal Procedure Code and to refer the case to the High Court. This point in my opinion, is now no more res integra and it is covered by a Full Bench decision of the Bombay High Court in the case of Walchand Jasraj Marwadi Vs. Hari Anant Joshi, . The relevant observation of the Full Bench is as under :?

The Sessions Court has no general power of making orders in revision; it can only, u/s 435, inquire into matters, before the subordinate Courts and if necessary refer to the High Court for orders u/s 438. But Section 520 seems to make it unnecessary for a subordinate Court of revision to adopt that course in matters within that section. If an application is made to the Sessions Court as the Court having powers of revision in respect of the trial Court in regard to orders relating to property made Under Sections 517. 518 or 519, then in my opinion, the Sessions Court can itself make a proper order and need not refer the matter to the High Court.

(Italics Supplied by me.)

It is thus crystal clear that when Kansara Tribhovandas Jamnadas filed Revision Application against the order disposing of the muddamal property by the learned Judicial Magistrate, First Class, Dhoraji u/s 517, the learned Additional Sessions Judge had to exercise his jurisdiction u/s 520 and it was open to him to pass any order considered just and proper by him. It was not necessary for him to refer the case to this Court,

4. In view of what is stated above, this Reference is summarily rejected, It would not cause any prejudice to Kansara Tribhovandas Jamnadas at whose instance this reference was made because he will have a chance to reagitate the matter before the Additional Sessions Judge. The learned Additional Sessions Judge, Rajkot District is directed to readmit the Criminal Revision Application No. 32 of 1969 to his file and to proceed to dispose of the same according to law. Order accordingly.