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**(1993) 01 GUJ CK 0014**  
**In the Gujarat High Court**

Kodarlal Keshavlal

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

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**Date of Decision :** 18-01-1993

**Acts Referred:**

Bombay Police Act, 1951 — Section 25(2)(c), 5(b), 5(b)  
Constitution of India, 1950 — Article 226  
Penal Code, 1860 (IPC) — Section 34

**Citation :** (1993) 1 GLR 816

**Hon'ble Judges :** C.K. Thakker, J

**Bench :** Single Bench

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## Judgement

C.K. Thakker, J.—This petition is filed against an order of dismissal passed by the District Superintendent of Police, Ahmedabad (Rural) and confirmed by appellate as well as revisional authorities.

2. To appreciate the controversy in question, few relevant facts may now be stated:

The petitioner was working in the Police force as Unarmed Head Constable. A criminal case was filed against him for certain offences punishable under different sections of the Indian Penal Code and he came to be convicted in Sessions Case No. 187 of 1980 by the Sessions Court, Ahmedabad (Rural) for offences punishable u/s 331 read with Section 34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for three years and a fine of Rs. 200/- by a judgment and order dated June 8, 1981. The said conviction was confirmed by this Court as well as by the Hon''ble Supreme Court.

After the conviction, a notice was issued to the petitioner on August 8, 1983 and he was called upon to show cause as to why he should not be dismissed from service. The petitioner submitted his reply and after considering it, the second respondent dismissed him from service by an order dated February 27, 1984, which was confirmed by the Deputy Inspector General of Police, Gandhinagar by an order dated February 3, 1986 by the Director General of Police by an order

dated August 7, 1987, and by the State Government by an order dated January 3, 1989. It is that final order which is challenged in this petition.

3. Mr. I.S. Supehia, learned Counsel for the petitioner raised a number of contentions. He submitted that the notice Annexure "A" as well as the impugned orders are contrary to law inasmuch as in the show cause notice, the petitioner was asked to show cause against removal from service, whereas an order of dismissal was passed against him. Mr. Supehia contended that though it was stated in the show cause notice as to why the petitioner should not be dismissed from service, the said expression preceded by expression and, therefore, even though the petitioner was asked to show cause against in substance and in reality, the notice was for "removal" and not for "dismissal". An action of dismissal from service was thus contrary to law and without jurisdiction. For the said purpose, reliance was placed on the decision of this Court in Sardarsing Devising v. D.S.P., Himafnagar and Ors. reported in 1985 (2) GLR 1368 and followed by me in Bhana Guman Patel Vs. Dy. Conservator of Forests and Others, .

4. I do not find any substance in the contention of Mr. Supehia. Looking to the decision in Sardarsing Devising (supra), it is clear that in that case, in the show cause notice, the delinquent was asked to show cause why he should not be "removed" from service, but at the time of passing the final order, he was "dismissed". This Court in the light of the show cause notice as well as the final order passed by the authority held that the order went beyond the show cause notice and, therefore, it was contrary to law. That principle was reiterated in Bhana Guman Patel's case (supra).

5. In the instant case, in the show cause notice itself, the disciplinary authority asked the petitioner as to why he should not be dismissed from service by using the expression and not "removed" as contended by Mr. Supehia. I, therefore, do not find any substance in the first contention of Mr. Supehia and hence, it is rejected.

6. Mr. Supehia then contended that the order was passed by the second respondent though it was required to be passed by the Inspector General of Police as the head of the department. Since it was not done, the action was illegal. For that contention, Mr. Supehia relied on various provisions of Bombay Police Manual.

7. In my opinion the said contention also cannot be upheld in view of the Statutory Rules known as Bombay Police (Punishments and Appeals) Rules, 1956, framed in the exercises of the powers conferred by Clause (c) of Sub-section (2) of Section 25 read with Section 5(b) of the Bombay Police Act, 1951. Looking to Rule 5 read with Schedule I, it is clear that so far as Head Constables are concerned, the disciplinary authority is District Superintendent of Police. He had issued notice, Annexure "A". Reply was submitted by the petitioner to him which was considered and the final order was also passed by him. If the

competent authority has issued a show cause notice and after taking into consideration the reply, passed an order, it cannot be said that the order is in any way contrary to law or requires to be set aside on that ground. That contention is, therefore, rejected.

8. Mr. Suphia finally contended that relevant considerations have not been taken into account by the disciplinary authority as well as by the appellate authorities and revisional authority and without application of mind an order of dismissal was passed. It was contended that the offences in question do not involve moral turpitude and for that reason also penalty of dismissal could not have been imposed on the petitioner. It was submitted that before imposing economic death penalty, the authorities ought to have considered important factors as judicially recognised in the decision of this Court in the case of *Mohanbhai Dungarbhay Parnai v. Y.B. Zala and Anr.* reported in 1979 (2) GLR 497.

9. I do not find any substance in the above contention also. Looking to the facts on the record, it clearly appears that for extracting confession a person was brutally beaten by the petitioner and other officers of the Police force. The Sessions Court while holding the petitioner guilty and imposing punishment on him made the following observations in para 143 of the judgment:

For getting a clue to stolen property, accused Nos. 1 to 4 have resorted to third degree method and they have relied on fists than on wits and on torture than on culture. They have given a wound on our constitutional culture by resorting to such a barbarous and brutal act, but it appears that they have done so in misconceived sense of duty

Putting emphasis upon the italicized observations, Mr. Suphia, submitted that had those observations been appreciated in their proper perspective by the authorities, they would not have passed an order of dismissal and on that ground also, the order requires to be quashed.

10. In my opinion, Mr. A. R. Dave is right in submitting that the authorities have seriously considered that aspect and observed that it was the duty of the Police force to protect citizens. Instead, a person was brutally beaten by the petitioner who ultimately lost his life. In this connection, it may be profitable to quote the following observations of the Hon''ble Supreme Court in the case of *Dagdu and Others Vs. State of Maharashtra*, The Hon''ble Supreme Court stated:

...The police, with their wide powers, are apt to overstep their zeal to detect crimes and are tempted to use the strong arm against those who happen to fall under their secluded jurisdiction. That tendency and that temptation must in the larger interest of justice be nipped in the bud.

(Emphasis supplied)

11. In a recent case of *Bhagwan Singh and another Vs. State of Punjab*, the Supreme Court reiterated the above view and observed:

It is a pity that some of the police officers, as it has happened in this case have not shed such methods even in the modern age. They must adopt some scientific methods than resorting to physical torture. If the custodians of law themselves " indulge in committing crimes then no member of the society is safe and secure. If police officers who have to provide security and protection to the citizens indulge in such methods they are creating a sense of insecurity in the minds of the citizens. It is more heinous than a game-keeper becoming a poacher.

(Emphasis supplied)

12. In my opinion, therefore, the authorities were right in holding that the offences wherein the petitioner was involved and ultimately held guilty by a competent Court, can be said to be serious in nature and the punishment of dismissal awarded to him cannot be said to be arbitrary, excessive or disproportionate which requires interference in the exercise of extra-ordinary jurisdiction of this Court under Article 226 or 227 of the Constitution of India,

I, therefore, do not find any substance in this petition and the petition requires to be dismissed. The petition is accordingly dismissed. Notice is discharged with no order as to costs.