
(1990) 04 GUJ CK 0017
In the Gujarat High Court

Maneklal Karsandas Davda

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 25-04-1990

Acts Referred:

Constitution of India, 1950 — Article 227

Criminal Procedure Code, 1973 (CrPC) — Section 133, 137, 138, 138(2), 139

Citation : (1991) 1 GLR 57

Hon'ble Judges : T.U. Mehta, J

Bench : Single Bench

Judgement

J.U. Mehta, J.—The present petitioner has preferred this application under Article 227 of the Constitution of India praying for issuance of writ of certiorari or any other appropriate writ, order or direction in the nature of certiorari quashing and setting aside the judgment and order dt. 7-8-1987 delivered in Criminal Revision Application No. 56 of 1985 by the Court of the Addl. Sessions Judge, Surendranagar and in turn to quash and set aside the judgment and order dated 22-7-1985 delivered in Criminal Application No. 1 of 1985 by the Court of Sub-Divisional Magistrate, Vadhavan Sub-Division, Surendranagar, at Annexures "B" and "A" respectively.

2. The facts of the present case are that: One Rameshchandra Chhotalal Thakkar submitted an application on 10-10-1984 to the District Magistrate, Surendranagar stating therein that the petitioner is running the Industry of "Kankoo" in his residential house which shares the common wall of his residential premises. According to the complainant, the said industry is carried out with the help of 10 workmen. That on account of this there is a continuous flow of the small species and the red particles of "Kankoo" in the residence of the complainant. As a result of this flow, such particles fall on the clothes and the edible articles and equipments and it also causes breathing trouble to the family members of the complainant. According to the complainant, the petitioner is using "Acid" in manufacturing "Kankoo" and therefore, as and when it is mixed with air it burns eyes of the children and the complainant and as such it is

harmful and adversely affects the vision. It was therefore, prayed that such activity of the petitioner should be prohibited u/s 133 of the Code of Criminal Procedure, 1973.

3. The District Magistrate sent the complaint to the Sub-Divisional Magistrate, Surendranagar. the Sub-Divisional Magistrate, Surendranagar sent the said application to PSI, Surendranagar and PSI Surendranagar had recorded statements of the neighbours and complainant etc. and submitted his report to the Sub-Divisional Magistrate and the learned Sub-Divisional Magistrate prima facie observed from the police report that the activity of the petitioner is harmful and injurious to health of the neighbours as well as the Primary Students of the Girls School situated in the adjoining premises and on 30-1-1985 it was ordered to close down the industry of manufacturing of "Kankoo" u/s 133 of the Cr. P. Code. Thereafter, after recording evidence and after appreciating evidence led before him by his order dt. 22-7-1985 ordered to the petitioner not to carry on the industry, the process of manufacturing the Kankoo and the commercial dealings in this behalf and from his residential premises. It is further held that on account of the activities of the petitioner it becomes nuisance to the public and school children and, therefore, it is established as a nuisance and, therefore, interim order dt. 30-1-1985 passed u/s 133 of the Code is confirmed and made it permanent u/s 138(2) of the Code.

The petitioner being aggrieved by the said order filed revision application before the Court of the learned Additional Sessions Judge Surendranagar being Criminal Revision Application No. 56 of 1985. After hearing the parties, the learned Addl. Sessions Judge dismissed the revision application by order dt. 7-8-1987 and confirmed the order passed by the Sub-Divisional Officer, Surendranagar.

4. Being aggrieved by the said judgment and order passed in Criminal Revision Application No. 56 of 1985 passed by the learned Addl. Sessions Judge, surendranagar, the petitioner has approached this Court as aforesaid.

The learned Advocate appearing on behalf of the petitioner submits that there is no provision in law authorising the Magistrate to make personal local inspection in the proceeding initiated u/s 133 of the Code and the fact that the Magistrate had inspected the spot vitiated the trial. The contention of the petitioner is well founded and, therefore, it must be accepted. While conducting an inquiry under Sections 137 and 138 of the Code, Section 139 of the Code, only empowers the Magistrate to direct a local investigation to be made by a person whom the considers fit. u/s 140 of the Code, the Magistrate has to furnish such person with such written instructions as may seem necessary for his guidance. Thereafter such person has to proceed to the spot and submit his report which is to be read in evidence. From these provisions it becomes clear that on principles of natural justice both parties will have a right to file objection to the report of such local inspection which would be decided by the Magistrate himself while conducting the inquiry u/s 138 of the Code.

There is no provision in Chapter X of the Code empowering the Magistrate to conduct such an inspection himself. It was held that Sees. 133 to 148 of the Code lay down complete procedure which has to be followed by the Magistrate while conducting cases of public nuisance for the purpose of maintaining public order and tranquility and these sections do not authorise Magistrate to conduct a personal inquiry. In my opinion, the patent illegality has been committed by the Magistrate in his decision which was influenced by his personal inspection. In my opinion, that this is a fit case where the case should be remanded for a fresh decision on the evidence produced by the parties ignoring the spot inspection made by the learned Sub-Divisional Magistrate, Surendranagar, dt. 22nd July 1985.

5. Similar view is taken by the Bombay High Court in the case of Smt. Bababai W/o. Krishna Kadam v. Mr. Sudhakar Brijlal Bhavsar reported at 1987 Cri. L.R. 396(bom).

6. In the result, the matter is remanded back to the Court of the Sub-Divisional Magistrate, Surendranagr to decide afresh on the evidence produced by the parties ignoring the spot inspection made by the learned Sub-Divisional Magistrate. Hence this petition is allowed. The impugned order dt. 7th August 1987 passed by the learned Addl. Sessions Judge, in Criminal Revision Application No. 56 of 1985, confirming the order of the learned Sub-Divisional Magistrate, Surendranagar dt. 22nd July 1985, is quashed and set aside and is directed to decide the matter afresh after appreciating the evidence already led by the parties ignoring the inspection report made by the learned Sub-Divisional Magistrate, Wadhavan Division Surendranagar. It is also made clear that no further evidence is required to be led by the parties except the evidence of shifting of manufacturing premises by the petitioner to some other place. As the matter is old one it is hoped that the matter will be decided by the learned Sub-Divisional Magistrate, Wadhavan Division, Surendranagar within three months from the receipt of the order of this Court. The petitioner shall maintain status quo till the matter is decided by the learned Sub-Divisional Magistrate, Wadhavan Dn. Surendranagar. Rule made absolute accordingly.