
(1964) 11 GUJ CK 0024
In the Gujarat High Court

Manilal Maganlal APPELLANT
Vs
The State of Gujarat and Another RESPONDENT

Date of Decision : 09-11-1964

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 376(1)(d)(i), 376(1)(d)(i) , 392(1)(a), 392(1)(a), 69

Citation : (1965) 6 GLR 25

Hon'ble Judges : V.B. Raju, J

Bench : Single Bench

Judgement

V.B. Raju, J.—This is a criminal revision application against the conviction of the applicant for breach of Schedule Chapter 2 and Section 376(1)(d)(i) of the Bombay Provincial Municipal Corporations Act 1949 punishable under Schedule Chapter 25 and Section 392(1)(a) of the said Act.

2. The main contention of the Learned Counsel for the applicant is that the complaint was filed by the Licence Inspector whereas the delegation u/s 69 of the Bombay Provincial Municipal Corporation Act was to the Deputy Health Officer to take proceedings as provided in Section 481 of the said Act. His contention is that the expression take proceedings means instituting a complaint and that only the Deputy Health Officer to whom the power of taking proceedings has been delegated can file a complaint and not the Licence Inspector as has been actually done in this case.

3. The Learned Counsel for opponent No. 2 contends that the phrase take proceedings does not necessarily include the filing of a complaint. But that is not the only meaning. According to him the expression take proceedings has also the meaning of causing a complaint to be filed. It is difficult to agree with this view because to do a thing does not include a thing to be done. The two expressions are entirely different in Section 211 of the India Penal Code. The expressions institute proceeding and causes to be instituted proceeding are both used. The Legislature has not contemplated that causing a complaint to be instituted would

be included in the expression take proceedings. Moreover if the Deputy Health Officer sanctions a complaint to be filed and a complaint is not actually filed would it mean that the Deputy Health Officer has already taken proceedings? According to the Learned Counsel for opponent No. 2 the Deputy Health Officer has taken proceedings the moment he has sanctioned a complaint to be filed. That means the Deputy Health Officer has taken proceedings although the proceedings may not have been instituted and although a complaint is not actually filed for some reason or other. This view does not appear to be reasonable. The view that the expression take proceedings includes causing proceedings to be taken does not therefore appeal to me because it is opposed to the normal meaning of the English language used in the expression. This point was left open by their Lordships of the Supreme Court in *Ballabhdas Agarwala Vs. J.C. Chakravarty*, But their Lordships of the Supreme Court have clearly laid down that a complaint which is not filed by the Health Officer would not comply with the requirements of the Calcutta Municipal Act. It is true that in Section 537 of the Calcutta Municipal Act the expression used is institute or withdraw from legal proceedings. If the expression take proceedings can be taken to include cause proceedings to be taken the expression institute proceedings can also be taken to include cause proceedings to be instituted. But their Lordships of the Supreme Court have clearly held that the expression institute proceedings does not include cause proceedings to be instituted. The expression take proceedings cannot therefore include cause proceedings to be taken.

4. The Learned Counsel for opponent No. 2 has cited *State v. Manilal Jethalal* 55 Bom. L.R. 37 7 and contends that this judgment is binding on me. But for the lengthy reasons given by me in my judgment in *The State Vs. Ramprakash P. Puri and Others*, the judgment is not binding on me. As I have already stated their Lordships of the Supreme Court have laid down that the expression institute proceedings cannot be given a wider meaning namely cause proceedings to be instituted. For the same reasons the expression take proceedings cannot be given a wider meaning namely cause proceedings to be taken. The proceedings have not been taken in this case by a properly authorised person namely the Deputy Health Officer who has merely sanctioned the filing of complaint.

The revision application is therefore allowed and the conviction and sentence of the applicant are set aside.