
(1990) 12 GUJ CK 0028
In the Gujarat High Court

Panatar Arvindbhai Ratilal	Vs	APPELLANT
State of Gujarat and Others		RESPONDENT

Date of Decision : 07-12-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 397, 403

Citation : (1991) 1 GLR 451

Hon'ble Judges : N.J. Pandya, J

Bench : Single Bench

Judgement

N.J. Pandya, J.—There is a checkered history to an offence registered with "A" Division Police Station, Jamnagar in its Crime Register No.

42 of 1986. As the Police did not initiate any investigation for a period of about eight months or so, the approached the learned Chief Judicial

Magistrate on or about 20-4-1987 and obtained certain orders of investigation. Thereafter the local Police of Jamnagar also initiated inquiry and at

the end, they submitted report on 9-6-1987 and sought "C" summary. The complainant-present petitioner objected to it and while hearing the

report as to "C" summary, the learned Magistrate allowed the proposed accused and the complainant also to be heard against which the petitioner

filed Criminal Revision Application No. 115 of 1987 in the Court of learned Sessions Judge, Jamnagar. The learned Sessions Judge agreed with

the petitioner and over-ruled the decision of the learned Magistrate allowing the accused to make submission. There were about seven accused,

who should strictly speaking be referred to suspects only, and two of them approached this Court by way of Criminal Revision Application No.

169 of 1988. That matter came to be decided on 22-7-1988 by Mr. Justice G.T. Nanavati confirming the order of the learned Sessions Judge.

2. The learned Magistrate thereafter heard the parties including the present petitioner and held that ""C"" summary is required to be granted, and

therefore, against that order, again a Revision Application came to be filed before the learned Sessions Judge at Jamnagar and it is numbered as

Criminal Revision Application No. 18 of 1989. In this Revision Application the said original suspects Nos. 2 and 3 who had approached this

Court by Criminal Revision Application No. 169 of 1988 had again applied to the learned Sessions Judge that they be permitted to make a

submission. In other words they wanted to be heard with regard to the Revision Application pertaining to the granting of ""C"" summary. The learned

Sessions Judge was pleased to allow this Application by his order dated. 6-1-1990, and being aggrieved by this order the original complainant has

approached this Court by way of this Criminal Revision Application.

3. On behalf of the aforesaid suspects-respondents the learned Advocate Shri Nanavati has taken preliminary objections and it is to the effect that

this is nothing else, but an interlocutory order and as such no revision would lie pursuant to Sub-section (2) of Section 397 of the Code of Criminal

Procedure. To this the learned Advocate Shri Anandjiwala appearing for the petitioner has contended that in first instant it might be that matter

remains to be decided and no final decision with regard to the granting ""C"" summary or otherwise has been given by the learned Sessions Judge

inasmuch as the Revision Application itself is yet to be decided. The fact remains that the entire character of the Revision Application pending-

before the learned Sessions Judge would undergo radical change on account of his permitting the suspects to have their say as if they are party

respondent before him directly connected with the matter right from the stage of the Court which passed the original order, he further submitted

that the order of the learned Chief Judicial Magistrate granting ""C"" summary itself being made a subject-matter of Revision, the matter pending

before the learned Sessions Judge should be taken as a continuation of that proceeding and unless the party seeking permission before the learned

Sessions Judge, had a right to be heard in the Court in the first instance, they can never be permitted to have their say before the learned Sessions

Judge and much less therefore, the learned Sessions Judge could have permitted them to have their say.

4. Another submission made on behalf of the respondent was that Section 403 of the Code of Criminal Procedure vests in the Court entertaining a

revisional power to permit any of the party or its Pleader, to make submission, in order words the Court may allow the party to be heard.

Now with regard to the first submission of the interlocutory order, I do not agree with the submission of learned Advocate Shri J.R. Nanavati. The

moment we realise that what was pending before the learned Chief Judicial Magistrate was a report pursuant to an order of inquiry u/s 156(3), the

matter therefore at that stage was over and on the report submitted by the Police represented by the prosecutor, the Chief Judicial Magistrate had

held that the complainant could have been heard and when his grievance is being urged before the learned Sessions Judge, if a party who is legally

speaking not before the Court is permitted to be heard in this manner, certainly right of the petitioner for revision before the learned Sessions Judge

is affected and so far as the petitioner is concerned who is to be heard and when is to be heard that question is certainly finally decided. In a

manner of speaking this being the Revision Application filed by original complainant when no process is decided to be issued by the learned Chief

Judicial Magistrate who granted "C summary per se it will be a matter of the choice of the petitioner as to who should be the party respondent.

Under the facts and circumstances of the case it could be none-else, but the State. Allowing the suspects to be heard in this manner would amount

to permitting to have their say at a stage which is not contemplated by the Code of Criminal Procedure and to that extent it would be giving a

premature hearing to them and more over as rightly submitted by learned Advocate Shri Anandjiwala, this very accused would be getting pre-trial

hearing as well as post-trial hearing in case the petitioner succeeds in setting aside the order of granting "C summary and then comes the stage of

issuance of process and framing of charge.

5. The view consistently expressed by this Court as well as by the Supreme Court about the hearing of the suspects at the stage of granting of "C

summary or not is clearly to the effect that they have no locus standi.

In this background we turn to the submission made u/s 403 of the Code of Criminal Procedure, by learned Advocate Shri J.R. Nanavati. There

again at first sight it might appear that party referred to in the said section could

be a part other than one arrayed before the Court on either side,
but when we realise that the matter to be dealt with under Chapter 30 of the Code of Criminal Procedure wherein occurs Section 403 power is that of a Revision and it being the power exercised by the Court, a party may or may not be heard as the Court may decide and this alone would explain the inclusion of Section 403 in that Chapter.

6. Otherwise all the procedural laws have as its foundation the maxim Audi Alterem Partem and at all stages wherever the need be there are provision for issuance of notice and making sure that the party against whom the orders are being sought is heard. Therefore, there was no need of inclusion of Section 403 at the place where we find it and we can appreciate it only and only if bearing in mind the fact that it being a chapter dealing with revisional jurisdiction which is expressly privilege of the Court realising the order of subordinate Court that there might be an occasion, the party need not be or may not be heard, and therefore, there is a specific provision in that behalf.

7. Once we appreciate the aforesaid section in this light of submissions made by learned Advocate Shri Nanavati pertaining to the aforesaid decision of the Gujarat High Court as well as that of the Supreme Court on hearing of the suspects at the stage of granting of "C" summary, can also be understood because the same principle will apply whether the accused are being dealt with under Chapter 13 or 17 of the Code of Criminal Procedure or under Chapter 30 of the Code of Criminal Procedure, as the case may be, the principle will not alter and more so when we appreciate the inclusion of Section 403 of the Code of Criminal Procedure, it becomes quite clear that the principle on the contrary would be reinforced.

Accordingly, I accept the submission of learned Advocate Shri Anandjiwala and allow the Revision Application. The order passed by the learned Sessions Judge below Ex. 4 in Cri. Revision Application No. 18 of 1989 is set aside, Rule is made absolute.