

(1975) 07 GUJ CK 0006
In the Gujarat High Court

Patel Bhogilal Manordas

APPELLANT

Vs

The Development Commissioner of Gujarat State and
Another

RESPONDENT

Date of Decision : 15-07-1975

Acts Referred:

Gujarat Panchayats Act, 1961 — Section 160, 161, 161, 51(1), 51(1)
Penal Code, 1860 (IPC) — Section 114, 504

Citation : (1976) 17 GLR 724

Hon'ble Judges : S.H. Sheth, J

Bench : Single Bench

Judgement

S.H. Sheth, J.—This petition has been filed by the sarpanch of Ziila-Vasna village in Chanasma Taluka of Mehsana District against the order of suspension made against him by the District Development Officer, Mehsana under Sub-section (1) of Section 51 of the Gujarat Panchayats Act, 1961. Respondent No. 3. Is a resident of Zilia village. He was given S. No. 177 of zilia for cultivation by the Government of Gujarat on 30th November 1972. Possession thereof was given to him on 22nd June 1973. It appears that S. No. 177 was a Kharaba or a waste land. Respondent No. 3 therefore cultivated the adjoining land S. No. 210 of zilia-vasna. It was a Gauchar land. The petitioner, therefore, lodged against respondent No. 3 an information before the police sub-inspector, chanasma on 21st July 1973 in respect of certain offences which respondent No. 3 was alleged to have committed. Respondent No. 3 in his turn lodged information against the petitioner and other members of the panchayat for offences alleged to have been committed by them under Sections 447, 504, 506, 114 and 427 of the Indian penal code and u/s 161 of the Gujarat Panchayats Act, 1961. An application was made to the district development officer to take Action against the petitioner under Sub-section (1) of Section 51. The district development officer held an inquiry into the matter and by his order dated 4th January 1975 suspended the petitioner from the sarpanchship of Zilia-vasana gram panchayat on the ground that he was involved in criminal proceedings in respect of an offence involving

moral turpitude. The petitioner appealed against that order to the Development Commissioner, Gujarat State. The Development Commissioner after hearing the parties confirmed the order made by the District Development Officer and dismissed the appeal.

2. It is that order which is challenged by the petitioner in this petition.

3. Mr. R.N. Shah who appears for the petitioner has raised before me the contention that the impugned order of suspension is not justified by the terms of Sub-section (1) of Section 51. Sub-section (1) of Section 51 provides as under:

The district development officer may suspend from office the Sarpanch or Upa-Sarpanch of a Gram Panchayat or as the case may be, the chairman or vice chairman of a nagar panchayat against whom any criminal proceedings in respect of an offence involving moral turpitude have been instituted or who has been detained in a prison during trial under the provisions of any law for the time being in force.

This sub-section requires that one of the two factors must be satisfied before an order of suspension is made against a sarpanch by the district development officer. The first condition is that "any criminal proceedings in respect of an offence involving moral turpitude have been instituted" against the sarpanch. The second factor is that he must have "been detained in a prison during trial under the provisions of any law for the time being in force." In the instant case the petitioner has not been detained in a prison. Therefore, the second alternative specified in Sub-section (1) of Section 51 is not attracted to the present case. Mr. R.N. Shah has argued that the offences which have been alleged against the petitioner do not involve "moral turpitude." he has also argued that the lodging of information with the police does not amount to "any criminal proceedings." Now the question whether the information lodged with the police amounts to institution of criminal proceedings is not difficult to answer. If the legislature had meant by criminal proceedings in a court of law or judicial proceedings in a criminal court of law it would have unmistakably said so. The legislature has not used that language in Sub-section (1) of Section 51. The legislature has used the expression "any criminal proceedings" which admits of a very wide connotation. Proceedings can be before a court of law or before a police officer who is competent to entertain them. If such proceedings, whether before a court of law or before a police officer, are criminal in nature, then their institution enables the district development officer to suspend, inter alia, a sarpanch from his office provided they are in respect of an offence or offences involving moral turpitude. In my opinion, the expression "any criminal proceedings" is wide enough to include within its sweep proceedings before a police officer in the shape of information of an offence lodged with him. I, therefore, find no substance in the first argument raised by Mr. R.N. Shah before me.

4. The second argument which Mr. N. Shah has raised before me is that the offences alleged against the petitioner do not involve moral turpitude. Mr. R.N.

Shah has the question is what is moral turpitude? Argued that moral turpitude means an Act which is shocking to moral conscience of the society in general. The new webster encyclopaedic dictionary of the English language defines turpitude "as follows:

1. Inherent baseness or vileness of principle, words, or Actions;
2. Shameful wickedness;
3. Moral depravity.

Shorter Oxford English dictionary, third revised edition defines "turpitude" as follows:

1. Base or shameful character;
2. Vileness;
3. Depravity
4. Wickedness.

5. Mr. M.B. Shah has invited my attention to the decision of the Supreme Court? In the matter of Mr. "P" an advocate AIR 1963 SC 1313. The Supreme Court in that case was concerned with the question of gross negligence on the part of an advocate-on-record. The question which arose was whether the gross negligence which the advocate-on-record had shown involved moral turpitude or delinquency. In that connection the Supreme Court has laid down that the expression "moral Turpitude or delinquency" should not be narrowly construed. According to the Supreme Court, wherever conduct proved against an advocate is contrary to honesty, or opposed to good morals, or is unethical, it may be safely held that it involves moral turpitude. A willful and callous disregard for the interests of the client may, in a proper case, be characterized as conduct unbefitting an advocate. Any conduct which makes a person unworthy to belong to the noble fraternity of lawyers or makes an advocate unfit to be entrusted with the responsible task of looking after the interests of the litigant, must be regarded as conduct involving moral turpitude. Having made these observations the Supreme Court has further observed that the expression": moral turpitude or delinquency "should not be construed in an unduly narrow and restricted sense.

6. He has also invited my attention to the decision of the Punjab High Court in Durga Singh Vs. The State of Punjab, . In that case it was argued in the context of Clause (2) of Article 311 of the constitution that a conviction must involve moral turpitude. The learned single judge negated that argument and observed that even, if" conviction on a criminal charge "meant" conviction on a criminal charge involving moral turpitude "then if a number of the police force is guilty of having been found drunk at a public place or to have become habituated to liquor and if he is convicted by a criminal court u/s 34, police Act, 1861. His conviction should be held as involving moral turpitude.

7. Mr. Mehta has argued that "moral turpitude" is not a static concept. Public notions of morality change from time to time, from clime to clime and from society to society. He has advanced proposition in this general support of his argument that while construing the expression "moral turpitude" used by the legislature in Sub-section (1) of Section 51 this Court should take into account social conditions and the moral notions prevailing in the society and determine its connotation. The argument advanced by Mr. Mehta is indeed a correct argument.

8. I now turn to the offences with which the petitioner has been charged. Section 447, I.P.C. deals with criminal trespass. Section 504 I.P.C. deals with intentional insult with intent to provoke breach of peace. Section 506 I.P.C. deals with criminal intimidation. Section 114 I.P.C. is an auxiliary section which deals with abetment of an offence which has been committed. Section 427, I.P.C. Deals with causing mischief or damage to the extent of Rs. 50/- or upwards. Section 161 of the Gujarat Panchayats Act, 1961 deals with punishment for allowing cattle to stray in street or to trespass upon private or public property. The question which has been raised before me is whether these offences which have been alleged against the Petitioner involve moral turpitude. Whether they involve moral turpitude or not is to be judged in the context of the duties which the petitioner has to perform. It is the duty of the petitioner as the Sarpanch to run the orderly Government of the village through the Gram Panchayat of which he is the sarpanch. The offence of criminal trespass directly militates against his duty to run the orderly government of the village. It is the duty of the petitioner as the sarpanch to cater to the welfare of the village people and to the establishment of peace amongst them. Offence u/s 504, I.P.C. Directly militates against his duty to cater to the establishment of peace amongst the village people and to run the orderly Government of the village. Similarly, the offence of criminal intimidation militates against his duty. To cater to the welfare of the village people. It is his duty as the sarpanch to take the village people and their properties under the protective arm of the panchayat as far as the panchayat can do it. The offence u/s 427, I.P.C. Directly militates against that duty of the petitioner as the Sarpanch. Next, Section 160 of the Gujarat Panchayats Act and the rules made thereunder require the maintenance of cattle pounds in order to prevent the cattle from straying away into the fields or properties of others and causing damage to them. Section 161 provides for punishment in respect of such an offence. Again, it is his duty to see that the provisions of the Gujarat Panchayats Act, 1961 of which he is a creature are faithfully implemented and carried into effect in order to cater to the welfare of the people. If he does something which is in violation of a provision of the Gujarat Panchayats Act, it must be said that he is behaving in a manner which is contrary to his duties or functions under the Act. By straying away his cattle into the fields of others he directly violated Section 161 of the Gujarat Panchayats Act provisions of which he is supposed or required to implement in order to cater to the welfare of the people. This behaviour on the part of the petitioner as the sarpanch must shock the general conscience of the society-in this case the village people. It also renders him unfit

to become the sarpanch an office which involves responsibility of looking after the interests of the village people. When looked at from this angle, these offences show that the petitioner showed callous disregard to the interests of the village people who have elected him as the sarpanch. This behaviour on the part of the petitioner must be regarded as opposed to good morals and to all canons of honesty which he is supposed to observe as the sarpanch.

9. In light of the principles laid down by the Supreme Court in the decision to which I have referred earlier it is quite clear that the offences which the petitioner is alleged to have committed involve, in the context of the functions of the office which he holds, moral turpitude. Therefore, the second argument raised by Mr. R.N. Shah does not appeal to me and is rejected. These are the only two arguments which Mr. R.N. Shah has raised before me. He has argued nothing else. In the result, since I find no substance in any of the arguments raised by Mr. R.N. Shah, the petition fails and is dismissed. Rule is discharged with no order as to costs in the circumstances of the case.