
(2011) 04 GUJ CK 0209
In the Gujarat High Court

Case No : Criminal Revision Application No's. 142 and 143 of 2011

Satyanarayan D. Battu

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 26-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 397, 401
Bombay Provincial Municipal Corporations Act, 1949 — Section 458

Citation : (2011) 04 GUJ CK 0209

Hon'ble Judges : M.B. Shah, J

Bench : Single Bench

Advocate : Ravindra Shah, for the Appellant; L.R. Pujari, APP, for the Respondent

Final Decision : Dismissed

Judgement

M.D. Shah, J.—Both these revisions by the applicant-original accused u/s 397 read with Section 401 of Code of Criminal Procedure, 1973 ("the Code" for short) challenge common order dated 10-2-2011 passed below Ex.2 in Sessions Case Nos. 136 of 2010 and 198 of 2010 respectively by the learned Addl. City Sessions Judge, Court No. 12, Ahmedabad, whereby applications for discharge filed by the applicants from Criminal Case Nos. 1488 of 2006 and 1534 of 2006 before the learned Metropolitan Magistrate Court, Ahmedabad, arising out of I.C.R. No. 65 of 2001 and 67 of 2001 respectively registered with Ellisbridge Police Station were dismissed.

2. The facts in short are that pursuant to devastating earthquake that occurred in the morning of 26-1-2001 in the entire State of Gujarat, Block No. A of Tagore Park Flats, Near Vishwakunj Society, Narayannagar Road, Paldi, Ahmedabad and certain portion of Shashwat Flats situated at 24, Pritamnagar Society, Behind Sadhana School, Ellisbridge, Ahmedabad, were collapsed causing death and injuries to several persons. It was alleged that due to poor quality of material used in the construction of those buildings, the buildings were collapsed and several persons were either died or sustained injuries and hence, complaints

were lodged with Ellisbridge Police Station registered as C.R.I. Nos. 65 of 2001 and 67 of 2001 respectively under various Sections of IPC, Gujarat Ownership of Flat Act as well as under the provisions of B.P.M.C. bye-laws and ISI Code inter alia alleging that the builders in collusion with other accused persons acted against the bye-laws and rule of Ahmedabad Municipal Corporation and police started investigation. At the end of investigation, as there appeared prima-facie case against the accused, charge sheets were submitted against the accused in the Court on 5-5-2008. Thereafter, case was transferred to the Court of learned Metropolitan Magistrate where cases were numbered as Criminal Case Nos. 1488 of 2006 and 1534 of 2006 and cases were committed to the Court of Sessions where they were numbered as Sessions Case Nos. 136 of 2010 and 198 of 2010 respectively. The applicant filed applications u/s 227 of the Code before the learned City Sessions Court, Ahmedabad, for discharge. Upon affording opportunity of hearing to the learned advocates appearing for the respective parties, those applications were dismissed by the learned Addl. City Sessions Judge, Court No. 12, Ahmedabad, vide common order dated 10-2-2011. Being aggrieved with the said order, present revisions have been preferred by the applicant-original accused.

3. Heard learned advocate, Mr. Ravindra Shah for the applicant and learned Addl. Public Prosecutor, Mr. L.R. Pujari for the Respondent-State in both the revisions.

4. Rule. Learned Addl. Public Prosecutor, Mr. L.R. Pujari waives service of rule in both the revisions.

5. It is mainly submitted by learned advocate, Mr. Ravindra Shah for the applicant-accused that though the applicant was serving as Civil Engineer, the Court below has failed to appreciate the fact that the applicant is a certified Diploma Civil Engineer. He was awarded Diploma Certificate by the Government Polytechnic at Ahmedabad and was a licensed Engineer with the Ahmedabad Municipal Corporation. It is further submitted that he was a salaried Engineer working under Architect Mr. Bankim Pandya. His main duty was to make plan and submit before the Municipal Corporation for approval. No other role is attributed to him. It is further submitted that he is not connected with the builder/organizer/developer regarding construction activity being put up at the site, however, Court below has failed to appreciate the fact that it was not the case against the applicant that he was the owner or the builder, structural engineer, architect, site engineer, supervisor or clerk of works. It is further submitted that builder Mr. Yunus Nabibhai Bagadia, a Civil Engineer by himself, was undertaking the project in which he had employed various agencies for construction activity of the flats. He was not entrusted with any duty to supervise the ongoing construction at the site. According to him, Mr. Shreyank Shashikant Dani employed by the builder was the Site Supervisor as reflected from the charge sheet dated 31-10-2004 wherein accused Mahendrabhai Fulchandbhai Shah was charge sheeted. However, a grave error has been committed by the Court below in not considering the aforesaid facts. In view of the above facts, it is requested that

the applicant may be discharged. It is further submitted that role played by the applicant was to apply his seal and sign the plans to be submitted to the Ahmedabad Municipal Corporation being certified Engineer and no other role was played by the applicant. Moreover, it is not the case of the prosecution that the buildings were collapsed due to building plans being improper or improper structural design or improper construction of the structure of the buildings. It is further submitted that owners/builders did not file the reports in the form of progress certificates with the Corporation as required by the bye-laws and did not give the completion certificates to show that the buildings were completed as per the approved plan. It is also submitted that Building Use Permissions were not obtained by the owners/buildings of the collapsed building. It is further submitted that owners/builders of the collapsed buildings constructed, completed and used the structure on their own and it might be due to construction of additional rooms and change of use causing additional load on the structure that would have resulted in consequent collapse of buildings in the earthquake. It is further submitted that various agencies and contractors appointed by the builders were involved in the construction of the buildings who would visit the site and supervise the work of the concerned builders. The duties and responsibilities of the applicant being an engineer are stipulated under Clause (i) of Building Bye-laws Manual-I of the Ahmedabad Municipal Corporation which reads as under:

(i) It shall be the duty of the person who prepares plan and sections to see that the existing positions on site is correctly represented on the plan. He shall also comply with the other requirements prescribed under the rules and Bye-Laws and prepare plan and sections in compliance of the Bye-Laws.

6. As per the said clause, the applicant not required to visit the site to see what type of quality was being used by the builder in the construction. It is submitted that the earthquake being a natural catastrophe, no rashness and negligence can be presumed or attributed to the applicant-accused who has only got the plan sanctioned from the Municipal Corporation. It was not the case that the buildings were collapsed due to improper structural design or improper construction of the structure of the collapsed building or due to mistake of the applicant. The case was that due to poor and low quality of material used in the building, the buildings were collapsed. However, he was not in any way responsible for the same because he has no connection with the structural design or construction activity of the building. Looking to the entire papers of charge sheet, since no prima facie involvement of the applicant is disclosed, he ought to have been discharged by the Court below and hence, the impugned common order of discharge may be quashed and set aside by allowing the revisions.

7. Learned Addl. Public Prosecutor, Mr. L.R. Pujari for the Respondent-State has submitted that the applicant is jointly and severally liable for the collapse of the buildings as he was the Supervisor and hence, was his duty to see that the construction was carried out as per the plan. Drawing attention of this Court

towards the plans submitted before the Corporation, he submitted that he had been designated as Supervisor in both the projects. Moreover, the permission application before the Town Development Officer of the Corporation also refer him as the Supervisor as per the construction under sanctioned plan. Further drawing attention of this Court towards Mark 5/2-Form No. 2A which is signed by the applicant and Mark 5/4 which is the handwritten statement of the applicant-accused, it is submitted that the applicant has specifically stated therein that he was retained as a Supervisor by the owner and he shall not supervisor more than 10 sites on any work day and he had undertaken the complete responsibility of supervising as per the Bye-laws of the Corporation to the sanctioned plan. It is therefore submitted that since all the aforesaid documents point finger at the applicant being a Supervisor, he cannot be said to be a Civil Engineer. According to him, this Court cannot appreciate the evidence of statements of witnesses recorded by the investigating agency at this stage. The reason for collapse of the buildings can be ascertained only upon leading evidence and if the trial Court upon conclusion of trial would come to the conclusion that the design prepared by him was in accordance with law after verifying the soil bearing capacity including specification of material, he will be acquitted. The Court cannot scrutinize the evidence and is not required to see the probable defense of the accused or the chances of conviction at this stage. What is required to be seen at this stage is the prima facie case and if the Court on going through the papers is satisfied that prima facie case is made out against the accused, accused is required to be tried. Here in the present cases, on going through the papers, it does appear that there is prima facie involvement of the applicant to conduct trial against him. Since the impugned order appears to be legal and proper, it is therefore urged that both the revisions be dismissed.

8. This Court has gone through the relevant records as well as the impugned order of discharge. This Court has also gone through the relevant bye-laws of the corporation. I am aware that in revision the Court is not bound to give detailed reasons.

9. This Court at present is required to see whether the present applicant is a Civil Engineer or the Supervisor as it is the submission of the learned advocate for the applicant that he is a Civil Engineer while it was held by the Court below that he is a Supervisor and hence, he is responsible in any way for the negligence caused in the collapse of the buildings or not. If he is a Civil Engineer, he cannot be fastened in view of decision rendered by this Court vide judgment and order dated 20-1-2010 passed in Criminal Revision Application No. 705 of 2006 and allied matters. If he is found to be Supervisor, he can be prima facie held to be liable for the collapse of the building and hence, he has to be tried.

10. It is true that documents such as plans of both the projects submitted before the Corporation, permission applicant submitted before the Town Development Officer of the Corporation, Mark 5/2 which is Form No. 2-A signed by the applicant, Mark 5/4 which is the handwritten undertaking given by the applicant

undertaking complete responsibility of supervising as per the bye-laws of the Corporation to the sanctioned plans, statement of Dipenbhai Nayanbhai Mehta, Interior Designer dated 19-2-2011 before the Police Inspector, Mark 5/6 which is the test report of sample from Ellisbridge Police Station for the offence registered as C.R. No. I-67 of 2001 and Mark 5/8 which is the test report of sample in respect of C.R. No. I-65 of 2001 of Ellisbridge Police Station show that the applicant was a Supervisor in both the projects undertaken by him. Moreover, he has undertaken the complete responsibility of supervision as per the bye-laws in both the cases.

11. It appears from Bye-law No. II(8) of the Building Bye-laws of the Corporation framed u/s 458 of the B.P.M.C. Act, 1949 that it shall be incumbent upon every person whose plans have been approved to submit amended plans for any deviations proposed to be made during the course of construction of building work.

12. As per bye-law No. II(10), approval of drawings and acceptances of any statements, documents, structural report, structural drawings, progress-certificate or building completion certificate shall not discharge the owner, surveyor, engineer, architect, clerk of works and the structural engineer from their responsibilities imposed under the Act and the bye-laws.

Bye-law No. II(16) stipulates about the responsibilities of the persons acting as Licensed Surveyor, Licensed Engineer, Licensed Architect, Licensed Designer and Licensed Clerk of Works, which are as under:

(i) It shall be the duty of the person who prepares plan and sections to see that the existing positions on site is correctly represented on the plan. He shall also comply with the other requirements prescribed under the rules and bye-laws and prepare plans and sections in compliance of the bye-laws.

(ii) It shall be the duty of the structural designer:

1. To prepare a report of the structural design according to prescribed format for submission to the Municipal Commissioner for the purpose of obtaining building permit.

2. To prepare detailed structural design on the basis of the National building Code or relevant Indian Standard Specifications.

3. To prepare detailed structural drawings and specifications for execution indicating thereon, design live load, safe soil bearing capacity, specifications of materials, assumptions made in design, special precautions to be taken by the contractor to suit the design assumptions etc. whatever applicable.

4. To supply two copies of structural drawing to the supervisor.

(iii) It shall be the duty of the supervisor who is engaged under these bye-laws:

1. To adhere strictly to the structural drawings, specification and written

instructions of the structural designer.

2. To follow the provisions of the National building Code or Indian Standard Specifications as regards materials, components, quality control and the process of construction.
3. To see that adequate provisions is made for ensuring the safety of workers and other during excavation, construction and erection.
4. To see that adequate provision is made for providing safe and adequate temporary structure required for construction and erection.
5. To bring to the notice of the structural designer any situation or circumstances which in his opinion is liable to endanger safety of workers or others.
6. To deposit with the Municipal Commissioner one set of structural drawings of the work executed along with the progress certificate before proceeding to the next stage of the work.

No supervisor shall supervise more than ten sites on any working day. When a clerk of works is appointed by the owner, in addition to his own appointment as a supervisor, his responsibility in connection with the specification and workmanship shall cease.

(iv) It shall be the duty of the Clerk of Works to see that the standards of specifications and the workmanship as prescribed in the National building Code are maintained during all the stages of the erection or execution of the work approved under the plans. The Clerk of works shall be full-time on the project and shall not take employment or appointment on any other site.

13. Bye-Law No. III(9) stipulates about safety of buildings. It specifies that every person who undertakes the construction work on a building or directs or supervises such works shall be responsible and shall ensure use of sound and good quality building materials properly put together for optimum safety. He shall be liable for all consequences arising out of breach of this bye-law. It also specifies that every person who undertakes construction of a building and/or who supervises the said construction and/or who designs the structural member of the building shall comply with the provisions of the National Building Code prevailing at the relevant time or the provisions of the Indian Standard Specifications published from time to time.

14. It appears from the bye-laws reproduced above that the applicant-accused as is directly responsible for any construction activities of the buildings. He is also concerned with sanctioning of the plan, design or to see whether inferior quality of material is used in the construction of the building or not. It also appears that as and when an application for occupation permission is made accompanied by a declaration of the owner that the work on the building is completed as per the approved plan and as per bye-law of the Corporation under the supervision of the Supervisor, the Supervisor shall issue a certificate to the effect that the

construction was carried out under his supervision as per the designed plan and is complete in all respects. He shall also certify that the materials used in construction are according to the specified standards and the buildings are safe for occupation. It is the duty of Clerk of works to see that standard of specification and workmanship as prescribed in the National Building Code are maintained during the stages of erection. Thus, it is clear that it is the Supervisor or Clerk of Works who would be mainly responsible for any negligence in the construction activities of the buildings and the applicant-accused being Supervisor can be held liable for the negligence in regard to the same. Thus, he can fastened with the liability of collapse of the building being Supervisor in both the buildings.

15. A reliance has been placed on paras 14 and 15 of common judgment dated 20-1-2010 passed by this Court in Civil Revision Application Nos. 705, 707 and 710 of 2006 whereby this Court discharged the accused who were Civil Engineers. However, in the present case, as it has been prima facie held above by this Court that the applicant is a Supervisor responsible for the construction activity of the buildings and hence, case of the present applicant cannot be compared with the case of those accused who are Civil Engineers and, therefore, applicant would not be entitled to the benefit of said judgment.

16. From the entire papers of charge sheet and the documents referred hereinabove, there is strong prima facie evidence to implicate the applicant with the offences alleged. Considering the nature of his duties, this Court is of the prima facie opinion that there is sufficient grounds to proceed with the trial against the applicant-accused and hence, the applications for discharge were rightly rejected by the learned Addl. City Sessions Judge. No irregularity or illegality has been noticed by this Court in the said findings and hence, both the revisions fail and are hereby dismissed. Rule is discharged.

Office shall place a copy of this judgment in each revision.