

(2009) 11 GUJ CK 0061
In the Gujarat High Court

Case No : Special Civil Application No's. 9993 and 10070 of 2006

S.J. Pathak Ex. Addl. Sessions Judge

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 06-11-2009

Acts Referred:

Arms Act, 1959 — Section 25(1)
Bombay Police Act, 1951 — Section 135
Central Sales Tax Act, 1956 — Section 10
Constitution of India, 1950 — Article 14, 235
Criminal Procedure Code, 1973 (CrPC) — Section 439
Gujarat Civil Services (Conduct) Rules, 1971 — Rule 10(2), 3, 6
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 17, 20, 20B, 27
Penal Code, 1860 (IPC) — Section 114, 302, 304, 304B, 306

Citation : (2009) 4 RCR(Civil) 936 : (2009) 7 SLR 380

Hon'ble Judges : K.S. Radhakrishnan, C.J.; Anant S. Dave, J

Bench : Division Bench

Advocate : Shalin N. Mehta and Viraj, for the Appellant; M.R. Mengde, Assistant Government Pleader for Respondent No. 1, Mihir H. Joshi and Biren A. Vaishnav, for the Respondent

Judgement

K.S. Radhakrishnan, C.J.—Judges are at times poor judges of Judges, especially in judicial administration, this case reveals. Full Court of the High Court in its Chamber Meeting held on 18.11.2005 accepted the report of the Disciplinary Committee consisting of Hon'ble Justices B.J. Shethna and D.K. Trivedi (since retired) in the Departmental Enquiry No. 3/99 and 9/99 and decided to dismiss the petitioner from service. Following the decision of the High Court, the Government issued a Notification dated 13.4.2006 and dismissed petitioner from service. Legality of those proceedings are under challenge in these petitions.

2. Petitioner while working as Assistant Judge at Godhra was served with an order dated 30th October, 1999, placing him under suspension on certain charges of misconduct, pending departmental enquiry. Petitioner was later

served with a charge-sheet dated 30.11.1999 stating that while he was working as Assistant Judge and Additional Sessions Judge at Junagadh from 4.5.1998 to 22.2.1999, he had granted various bail orders to accused persons in serious cases for consideration other than judicial one and thereby indulged in corrupt practices and was guilty of dereliction of duty in discharging his official functions and had acted in a manner unbecoming of a judicial officer and that his action would amount to acts of grave misconduct, violating the provisions contained in Rule 3 of the Gujarat Civil Services (Conduct) Rules, 1971. Further it was also stated that principles laid down by the Hon''ble Supreme Court in Gudikanti Narasimhulu and Others Vs. Public Prosecutor, High Court of Andhra Pradesh, were not applicable to the cases where the accused were involved in serious offences like kidnapping, abduction of minor child and bride-burning or any other offences affecting the entire society at large and in such serious offences, bail applications should not have been entertained by the Courts unless strong case was made out in favour of the accused. Further it was also stated that petitioner though fully aware of the above settled principles, with oblique motive ignored the said principles and after accepting huge amount as illegal gratification, granted bail to the accused in certain matters, whose previous applications for bail were either rejected on merits or withdrawn. Further it was also stated that petitioner had granted bail to the accused involved in serious offences falling under the provisions of Sections 17 and 20 of the Narcotic Drugs and Psychotropic Substances Act, as also offences punishable under Sections 302, 306, 307 and 376 of the Indian Penal Code. Further it was also stated that while discussing the evidence in bail orders, petitioner had written detailed judgments, which was not permissible and had released many of the accused persons on bail on flimsy and imaginary grounds like charge-sheet had already been filed in the matter; case of prosecution was not free from doubt; wife or the father of the accused was suffering from abdominal pain; co-accused was released on bail; intention of the accused was not to commit murder and therefore, case falls u/s 304-II IPC; it was a case of sudden provocation and does not fall u/s 302 of the IPC; presence of the accused in the place of incident was doubtful; there was delay in filing FIR; accused would be marrying in the near future; nothing being mentioned in the inquest panchnama and the panchnama of the place of the incident to attract ingredients of offence alleged; there was no prima-facie case against the accused, etc. etc.

3. Petitioner was served with yet another charge-sheet on 30.11.1999, stating that while he was working as the Fourth Joint Civil Judge (Senior Division) and Judicial Magistrate First Class, Bharuch from 10.6.1991 to 12.6.1994, he had acquitted an accused involved in Criminal Case No. 568 of 1988 in collusion with Mr. Chavda, the then Additional Public Prosecutor, Bharuch, by concluding in the judgment that prosecution had failed to prove charges against the accused. That was a case where accused had failed to pay an amount of Rs. 1,14,019/- towards Sales-tax and thereby had committed offence punishable u/s 10 of the Sales Tax Act, 1956.

4. Petitioner later submitted a detailed reply dated 27.3.2000 to the Registrar of the High Court, raising preliminary objection against initiation of Departmental proceedings, being Departmental Inquiry No. 3 of 1999. Delinquent Officer has also submitted a written reply on 24.2.2000 against initiation of Departmental proceedings, being Departmental Inquiry No. 9 of 1999. Pursuant thereto, High Court by letter Nos. LOB/VC-489/98-I dated 13.4.2000 and LOB/VC-430/94-II dated 3.4.2000, appointed Smt. Bela Trivedi, Judge ? City Civil and Sessions Court, Ahmedabad to act as Enquiry Officer in respect of Departmental Enquiry No. 3/99 and 9/99. The Enquiry Officer formulated following three points in respect of the enquiry case No. 3/99:

(i) Whether the Department proves that the delinquent ignoring the settled principles of law, granted bail to the accused involved in serious offences on flimsy and imaginary grounds;

(ii) Whether the Department proves that delinquent with oblique motive and accepting huge amount as illegal gratification granted bail to the accused involved in serious offences and thereby had indulged in corrupt practices;

(iii) Whether the Department proves that delinquent committed acts of great misconduct and acts tantamount to conduct unbecoming of a judicial officer, violating the provisions contained in Rule 3 of the Gujarat Civil Services (Conduct) Rules, 1971;

5. Regarding the first charge, the Enquiry Officer in detail examined the scope of Section 439 of the Cr. P.C as also Sections 302, 307, 376 and 306 of IPC and Section 20B of the Narcotic Drugs and Psychotropic Substances Act, and also various other decisions of this Court and the Supreme Court reported in State of Gujarat v. Pratapsinh Madhavsingh Padhiyar 1996 (3) GLR 861 , State of Gujarat Vs. Sairabanu, Satish Jagdishchandra Mistry and Another Vs. State of Gujarat, Union of India (UOI) and Others Vs. Arun Kumar Roy, , Jitubhai Shanabhai Bhatt Vs. State of Gujarat, , Babu Singh and Others Vs. State of U.P., , Kanubhai Ramjibhai Rabari Vs. Kalabhai Jaisingbhai and Others, , Bhagirathsingh Judeja Vs. State of Gujarat, , Pankaj Pradhan Vs. State of Orissa, , A.V. Dharmasingh and others Vs. The State of Karnataka, , Dadan Singh Vs. State of U.P., , and various other decisions and came to the conclusion that the delinquent had passed various orders releasing the accused on bail, who were charged with serious offences, in utter disregard and in ignorance of settled legal position and was held guilty of the first charge.

Enquiry Officer with regard to the second charge held that Department had not produced any evidence on record except the R&P of the case pertaining to bail applications decided by the delinquent officer, to show that delinquent had passed orders in the same with oblique motive and after taking illegal gratification. Enquiry Officer however, observed that from the orders, a strong suspicion could be raised against the delinquent and one would be tempted to hold that the said orders having been passed against settled principles of law, an

adverse inference could be drawn against the delinquent. However, the Enquiry Officer had opined that suspicion could not take place of proof even in Departmental proceedings and held that the Department had failed to prove second charge against the delinquent that he had passed various orders with oblique motive or after receiving illegal gratification.

With regard to the third charge that the delinquent had committed acts of grave misconduct, acts tantamount to conduct unbecoming of a judicial officer, the Enquiry Officer held that the Department had failed to prove charge of grave misconduct or to show that delinquent had acted unbecoming of a judicial officer. Accordingly, Enquiry Officer submitted his report dated 4.1.2001 to the Disciplinary Authority.

6. Enquiry Officer also conducted detailed enquiry with regard to Departmental Enquiry No. 9 of 1999. Following are the two charges considered by the Enquiry Officer:

(i) Whether Department proves that the delinquent after receiving huge amount as illegal gratification from the accused of Criminal Case No. 568/88, acquitted him of all the charges by judgment dated 8.3.1994?

(ii) Whether Department proves that the delinquent was guilty of indulging in corrupt practices and dereliction of duty in discharging judicial functions and had acted in a manner unbecoming of a judicial officer violating the provisions contained in Rule 3 of Gujarat Civil Services (Conduct) Rules, 1971?

Enquiry Officer after conducting a detailed enquiry held that Department had failed to prove charges leveled against the delinquent by producing any material on record to prove charges of collusion of the delinquent with the accused and Additional Public Prosecutor and delinquent accepting illegal gratification from the accused. The Enquiry Officer concluded that it would be doing injustice to the delinquent to hold that delinquent had acted indulging in corrupt practices or had acted in a manner unbecoming of a judicial officer or committed acts of misconduct as alleged by the Department. Enquiry Officer held that charges leveled against the delinquent had not been proved and accordingly, report dated 29.12.2000 was submitted by the Enquiry Officer to the Disciplinary Authority.

7. In nutshell, with the two enquiry cases and five charges leveled against the delinquent, sole finding of the Enquiry Officer was to the effect that the delinquent had passed various orders releasing the accused on bail, who were charged with serious offences, in utter disregard and in ignorance of settled legal position.

8. Both the enquiry reports were ready by 4.1.2001, but it was placed before the Disciplinary Committee consisting of Justice B.J. Shethna and D.K. Trivedi, constituted for the year 2002. With regard to Departmental Enquiry No. 3/99, the Disciplinary Committee has stated as follows:

We have gone through the report and the oral as well as documentary evidence

on record. Having gone through the same, we find ourselves, in complete agreement with the findings recorded by the Enquiry Officer that delinquent Mr. Pathak granted bail to the accused involved in serious offences like murder, bride burning, rape etc. ignoring the settled legal principles for granting bail and thereby had committed serious error in passing the said orders. However, having gone through the bail orders, we are not inclined to agree with the final conclusion of the Enquiry Officer that the Department failed to prove the charges leveled against him and we tentatively hold that the charges leveled against the delinquent Mr. Pathak are established.

Further, the Disciplinary Committee has also stated as follows:

Accordingly, we tentatively hold that the charges leveled against delinquent Pathak are found to be established. Looking to the seriousness of the matter, we are of the considered opinion that it is a fit case for dismissal from service.

We, therefore, direct the office to issue notice along with copy of the enquiry report as well as this tentative decision to the delinquent Mr. Pathak, calling upon him to show cause as to why penalty of dismissal from service should not be imposed upon him as provided in Rule 6 of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971.

9. Above mentioned Disciplinary Committee also did not accept the report of the Enquiry Officer submitted in Disciplinary Enquiry No. 9 of 1999.

10. We find from the record that after taking tentative decision as above, as per the precedence both the reports of the Enquiry Officer were placed before the Table of the Hon'ble High Court for 48 hours, in view of the Resolution passed in the Chamber Meeting held on 26.12.1988. Two Hon'ble Judges made endorsement on 25.2.2002 to place those reports in the Chamber Meeting. Accordingly, those reports were placed in the Chamber Meeting held on 6.4.2002 and following decision was taken.

On consideration of the above two subjects, it was decided that, there is no cause for taking a decision since the decision of the Disciplinary Committee in Departmental Enquiry Nos. 3/99 and 9/99 are tentative.

11. Delinquent Officer was later served with a show cause notice dated 13.5.2002 along with tentative decision taken by the Disciplinary Committee in respect of Departmental Enquiry No. 3 of 1999, and it was informed that the High Court had tentatively come to the conclusion that the charges were proved against him for reasons stated in the tentative decision of the High Court and it was proposed to issue show cause notice as to why he should not be dismissed from service. Delinquent Officer was accordingly called upon to show cause within 15 days from the date of receipt of the notice as to why proposed action should not be taken against him. Similar notice was also served on the petitioner with regard to Departmental Enquiry No. 9 of 1999.

12. Delinquent Officer submitted his reply statement dated 29.6.2002 and also a

written submission on 13.9.2002 in respect of both Departmental Enquiry Nos. 3/99 and 9/99. Delinquent Officer was later directed to remain present before the Disciplinary Committee consisting of Justice N.G. Nandi (since retired) and Justice Mohit S. Shah, on 7.3.2003 and the delinquent officer was heard by the Disciplinary Committee in Departmental Enquiry No. 3/99. Ultimately, Disciplinary Committee, after perusing the entire evidence on record and after hearing the delinquent officer, held as follows:

It will be seen from the oral evidence adduced in the inquiry proceedings that all the witnesses have made only general allegations against the judicial officers working at Junagadh. Even the evidence of witness No. 3 and 4 suggests that they had no grievance against the delinquent during his tenure at Junagadh. All that can be said is that the oral evidence is on the basis of the loose talks in the bar regarding doubtful integrity of the judicial officers. It is pertinent to note that none of the witnesses has made any specific allegations against the delinquent. All that is suggested is that there was suspicion about integrity of the delinquent.

10. While answering point Nos. 2 and 3, the Inquiry Officer has observed that the department has not led any evidence much less cogent evidence to show that the delinquent had passed the orders with oblique motive and had received illegal gratification for passing imputed orders. As pointed out above, the witnesses examined on behalf of the department, particularly witnesses Nos. 3 and 4, have only stated that irregular orders have been passed. As submitted by the delinquent and stated in the written submissions, the reasons for passing the bail orders have been assigned therein, stating the facts.

11. It need hardly be said that the grant of discretionary order releasing the accused on bail pending trial would depend upon the facts and circumstances of each case. It is a matter of individual perception. It is always the evidence prima-facie suggesting the involvement/or otherwise of the accused which decides the fate of the bail application. Simply because the particular section is mentioned in the charge sheet that by itself cannot be a decisive factor in either rejecting or granting the bail applications. It is a matter of experience day in day out that the orders passed by the subordinate Court, are set aside or modified by the superior courts. Simply because the order either granting or refusing the bail is passed, that cannot be taken as an order with oblique motive. As suggested from the record, none of the orders which are referred to in the charge, passed by the delinquent in the discharge of his duty as a judicial officer is carried to the superior court and set aside or modified by the superior court at the instance of either the State or the original complainant. The judicial hierarchy is for correcting the mistakes/errors committed by the subordinate courts. The principles for grant of bail are well settled by the judicial pronouncements by the Hon"ble Apex Court and the High Courts. The application of the principle for or against the grant of bail would depend upon the facts of each case and, therefore, there is every likelihood of the error creeping in while passing an order granting/refusing bail.

12. The grant/refusal of bail is a discretion to be exercised judiciously. It may be that the Court may have committed an error in granting bail or at times, the order may be erroneous but, that itself cannot label such order as tainted. Order granting or refusing bail is a judicial opinion and judicial opinion differs. The possibility of arriving at different conclusion can hardly be a ground to hold that the order passed is flimsy or on imaginary grounds. Judicial orders passed in ignorance of the settled legal position would not by itself constitute a misconduct much less of a degree, requiring imposing of any penalty. The Inquiry Officer in her report has found that no motive could be attributed to the delinquent. All that can be said is that the order passed in ignorance of the settled legal position is not a correct or a proper order and nothing beyond that. Such orders cannot necessarily be said to be motivated by extraneous considerations and wrong, illegal or improper orders cannot warrant initiation of departmental proceedings against the judicial officer.

As regards the finding given by the Inquiry Officer on Charge No. 1, we have carefully gone through the allegations contained in Charge No. 1 and the explanation offered by the delinquent in the written submissions for granting bail in the facts of each individual case.

It cannot be said that the bail application once rejected cannot be filed again if the subsequent bail application gives more details and there is a change in the fact situation of a case. Thus, there is no bar in law in filing the successive bail application.

In granting the bail to an accused for the offence u/s 27 of the NDPS Act where the accused is alleged to have possessed contraband, the quantity of the substance/contraband and such other relevant circumstances may have a bearing on the exercise of the discretion in favour of the accused to release him on bail when the quantity of the contraband allegedly possessed by the accused is a small one. There is only one case where the bail granted by the delinquent in an NDPS case is objected to in this inquiry. Only 15 gms. of charas was found in possession of the accused.

Similarly when the offence is punishable u/s 306 of IPC, relationship of the accused with the deceased, family circumstances, age of the accused and age of the young children left behind by the deceased mother are also relevant facts which were considered by the delinquent while passing the five bail orders which are subject matter of the charge sheet in this inquiry. The accused were either old in-laws or teenager sisters in law. In some cases the deceased mothers who had committed suicide had left children aged 3 months or 11 months. The considerations applicable to bail in offences u/s 306 cannot be as stringent as those applicable to bail in offences punishable u/s 304B IPC. None of the bail orders in this inquiry pertain to offence punishable u/s 304-B IPC.

In respect of offences u/s 307, the nature of the injuries, the fact whether the victim is still in hospital or discharged, the period of hospitalization, the weapon

used, the part of the body on which injury is inflicted are some of the relevant factors required to be considered to prima-facie ascertain the intention of the accused at the time of deciding bail application. The delinquent had considered such relevant factors. In fact in the only case u/s 307 IPC under consideration, there was no injury. The bail orders passed by the delinquent in seven cases involving offence u/s 302 and one case involving offence u/s 376 of IPC are also explained by him in his written submissions and orally.

In short, we find that in the facts and circumstances of the concerned cases the bail orders granted by the delinquent were not unwarranted or unjustified. In any case, none of the orders under consideration can at all be stigmatized as perverse or such as to shock the conscience.

13. The orders passed by the delinquent were in discharge of his judicial duty. None of the orders have been challenged questioning the legality/correctness or the propriety before the higher forum. Even if the order passed by a subordinate Court is found to be wrong, illegal or improper and that such an order should not have been passed, then the presumption would be of an honest error on the part of the judicial officer and there cannot be a presumption of dishonesty or mala fides on the part of the judicial officer. It need hardly be said that even in the departmental inquiry, charge cannot be sustained on mere conjectures/surmises in absence of some evidence. We are conscious that strict rules of evidence are not required to be observed in departmental proceedings but, at the same time suspicion cannot take place of proof and even in domestic inquiry there should be some concrete allegation and some credible evidence suggesting doubtful integrity of the officer concerned. There is a considerable difference between error and the oblique motive and that difference has to be covered by some evidence. There has to be preponderance of probability to entertain doubt regarding the possibility of doubtful integrity and it is then only there would be justification to hold an officer with doubtful integrity. But there can be no inference of mala fides or oblique motive or corrupt practice in absence of even remote evidence in that regard.

14. Having regard to the material on record and the facts emerging there from, we do not accept the report of the Inquiry Officer on point No. 1, whereas we accept the report on point Nos. 2 and 3 and as the consequence thereof, discharge the show cause notice dated 13.5.2002 calling upon the delinquent to show cause as to why penalty of dismissal from the service should not be imposed upon him as provided in Rule-6 of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971. Accordingly, the delinquent is exonerated from all the charges contained in the charge sheet dated 30.11.1999 in Departmental Inquiry No. 3 of 1999.

13. The Disciplinary Committee headed by Justice N.G. Nandi also submitted its final decision dated 7.3.2003 in respect of Departmental Enquiry No. 9 of 1999, accepting the report of the Enquiry Officer and holding that the charges leveled against the delinquent Officer was not proved by the Department.

14. Thereafter, copies of both the final decisions in respect of Enquiry No. 3/99 and 9/99 submitted by the Disciplinary Committee, were again placed on the Table of the Hon'ble High Court for perusal of the Hon'ble Judges. Two learned Judges made endorsement to the effect that the decisions of the Disciplinary Committee be placed before the Chamber Meeting on 6.5.2003. Accordingly, decisions of the Disciplinary Committee headed by Justice N.D. Nandi were placed before the Chamber meeting on 6.5.2003, in which following decision was taken:

After considering the report dated 8.4.2003 in Departmental Enquiry No. 3/99, and 7.3.2003 in Departmental Enquiry No. 9/99 submitted by the Disciplinary Committee comprising Hon'ble Messrs Justices N.G. Nandi and M.S. Shah in Departmental Enquiry No. 3/99 and 9/99 held against Mr. Pathak, it was resolved by the House not to accept the report exonerating him.

It was further resolved that the earlier Disciplinary Committee consisting of Hon'ble Messrs Justices B.J. Shethna and D.K. Trivedi, on the basis of whose report High Court has issued show cause notice on 13.5.2002, be requested to proceed on the stage of show cause notice, on the point of penalty.

15. In view of the above decision taken in the Chamber Meeting held on 6.5.2003, delinquent officer was served with a notice dated 16th September, 2003 with regard to Departmental Enquiry No. 3/99, stating that the High Court had not approved report of the Disciplinary Committee consisting of Hon'ble Messrs Justices N.G. Nandi and M.S. Shah, and it was decided to entrust the enquiry to the earlier Committee headed by Justice B.J. Shethna to proceed against delinquent from the stage of show cause notice. Delinquent Officer was therefore, called upon to show cause why he should not be dismissed from service and was asked to submit his reply within 15 days of the receipt of the notice. Similar notice was also issued in respect of Departmental Enquiry No. 9/99.

16. Delinquent Officer replied to the said notices stating that he had already submitted written submissions and statements with regard to various charges leveled against him and made a request that he may be heard by the Committee.

17. Delinquent Officer was accordingly served with a letter dated 8th October, 2003, directing him to appear before the Disciplinary Committee on 6.11.2003 in the Chamber of Justice B.J. Shethna, as he then was. The Disciplinary Committee then submitted its final decision dated 25.11.2003, holding that all the charges leveled against him were proved and he be inflicted with the penalty of dismissal from service.

18. The final decision of the Committee dated 25th November, 2003 was again placed before the Table of the Court and one of the learned Judges had made an endorsement to place that decision before the Chamber Meeting.

19. Record shows that the decision of the Committee was placed before the

Chamber Meeting held on 18.11.2005, i.e after a period of about 23 months, and it was resolved to accept the decision of the Disciplinary Committee headed by Justice B.J. Shethna and Justice D.K. Trivedi, and it was ordered that delinquent Officer be dismissed from service.

20. Later, delinquent officer was served with a communication dated 21.12.2005 in Departmental Enquiry No. 3/99 and 9/99 informing that High Court has decided to dismiss him from service. Following the decision of the High Court, a Notification dated 13.4.2006 was issued by the Government, dismissing delinquent officer from service. Aggrieved by the same these writ petitions have been preferred.

21. Mr. Shalin Mehta, learned Advocate appearing for the delinquent officer submitted that the Disciplinary Committee has committed a serious error in coming to the conclusion that the delinquent officer was guilty of all the charges warranting dismissal from service. Learned Counsel pointed out that Enquiry Officer appointed by the Disciplinary Committee has categorically found that there is no basis in the second and third charges leveled against the delinquent officer, though it was found that bail orders were issued contrary to the settled legal principles. Learned Counsel submitted that all the bail orders passed by the delinquent officer were supported by reasons, and if those reasons were unsustainable, those orders could have been challenged before the appellate forum. Learned Counsel submitted that the delinquent officer had, in his judicial career, rejected several bail applications, but few orders were picked up for enquiry, say about 19 in number, and tested in light of some judicial pronouncement. Learned Counsel referred to the judgment of the Apex Court in Bhagirathsinh Judeja Vs. State of Gujarat, and submitted that it is a settled position of law that power to grant bail should not be exercised as if punishment is being imposed before the trial. Learned Counsel also referred to the decision of the Apex Court in State of Rajasthan, Jaipur Vs. Balchand alias Baliay, as also decision reported in Gudikanti Narasimhulu and Others Vs. Public Prosecutor, High Court of Andhra Pradesh, and submitted that Apex Court has laid down ratio for granting bail, basic rule of bail and not jail. Learned Counsel also placed reliance on the decision of the Apex Court reported in Zaffar Mohammad alias Z.M. Sarkar Vs. The State of West Bengal, . Further counsel also submitted that the mere fact that earlier bail application was rejected does not mean that subsequently bail cannot be granted. Reference was made to the judgment of the Apex Court reported in Babu Singh and Others Vs. State of U.P.,

22. Learned Counsel referred to Sessions Case No. 46/97 wherein accused were charge-sheeted for the offences punishable u/s 302, 114 etc. of IPC. In that case delinquent officer had rightly granted bail and ultimately all the accused were acquitted by the Sessions Court, Porbandar on 5.12.2003 after a full-fledged trial. Further, learned Counsel also submitted that in Sessions Case No. 31/98, charges leveled against the accused were u/s 307, 114 of IPC and Sections 25(1) (a)(b) of the Arms Act and Section 135 of the Bombay Police Act, in which case

also accused persons were ultimately acquitted by the Sessions Court on 21.3.2007. So also in Sessions Case No. 5/98, accused persons were charged for offences punishable under Sections 302, 114 of IPC and Section 135 of BP Act, however, delinquent officer had granted bail in those matters for cogent and sufficient reasons recorded in the order and ultimately after the trial, all those accused persons were acquitted by the Sessions Court. Learned Counsel submitted in any view assuming that delinquent officer had committed an error in appreciating various judgments of the Apex Court or in applying the correct principles of law, since those were reasoned orders, the complainant or the State could have challenged before the Appellate Court, but the same has not been done. Further, no complaint was filed against the delinquent officer either by the complainants or by the Prosecuting agency at any point of time on the administrative side. Counsel submitted that there is no justification in initiating disciplinary proceedings on the basis of anonymous complaints sent by some disgruntled persons. Complaint was general in nature and directed against the judicial officers in general. Learned Counsel submitted that two Judges Committee headed by Justice N.G. Nandi in its report dated 8.4.2003 has rightly come to the conclusion that the orders passed by the delinquent officer were in discharge of his judicial duties and none of the orders had been challenged questioning the legality, correctness or propriety of those orders before the higher forum. Learned Counsel also submitted that the enquiry officer has rightly held that charges 2 and 3 were not proved in the Departmental Enquiry No. 3 of 1999 against the delinquent officer, which view was rightly endorsed by the Disciplinary Committee headed by Justice N.G. Nandi. Learned Counsel also submitted that Disciplinary Committee headed by Justice B.J. Shethna had not stated any reasons for disagreeing with the findings recorded by the Disciplinary Committee headed by Justice N.G. Nandi or with regard to the findings recorded by the Enquiry Officer in respect of charges 2 and 3. Learned Counsel also submitted that delinquent officer should have been given an opportunity of being heard under Rule 10(2) of the Gujarat Civil Services (Discipline and Appeal) Rules before the Disciplinary Committee had decided to express its disagreement with the findings recorded by the Enquiry Officer and the Disciplinary Committee headed by Justice N.G. Nandi. Learned Counsel also referred to the decision of the Apex Court in Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, and submitted that whenever the disciplinary authority disagrees with the findings of the enquiry officer on any article of charge, then before it records its findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. Learned Counsel also referred to the decision of the Apex Court in Kashi Nath Roy Vs. State of Bihar, and submitted that the premise that a Judge committed a mistake or an error beyond the limits of tolerance is not a ground to inflict condemnation on the Judge unless there exists something else and for exceptional grounds. Reliance was placed on the judgment of the Apex Court in Yoginath D. Bagde Vs. State of Maharashtra and Another, . Learned Counsel also referred to the judgment of the Apex Court in Ramesh Chander

Singh Vs. High Court of Allahabad and Another, and submitted that the Apex Court on several occasions disapproved the practice of initiation of disciplinary proceedings against officers of subordinate judiciary merely because judgments/orders passed by them were wrong.

23. Learned Counsel Mr. Vaishnav appearing for the second respondent tried to defend action taken by the High Court. Learned Counsel submitted that there is sufficient material in this case to hold that the petitioner had committed serious misconduct in granting several bail orders contrary to the settled principles of law pertaining to serious offences like murder, rape etc. Learned Counsel submitted that the orders passed by the delinquent officer would indicate that those orders were passed for extraneous considerations and due to corrupt practices. Learned Counsel submitted that charges leveled against the delinquent officer need not be established beyond reasonable doubt but only on the basis of preponderance of probabilities. Learned Counsel referred to the judgment of the Apex Court in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., and submitted that the Disciplinary Committee has followed all the legal requirements before taking decision to dismiss the delinquent officer from service. Reference was also made to the decision of the Apex Court in Tarak Singh and Another Vs. Jyoti Basu and Others, and highlighted the necessity of Judges exercising self-discipline of high standards and also the need to maintain high standards of integrity in the judicial work.

24. We have elaborately dealt with the facts of the case in the earlier part of our judgment and therefore, it is unnecessary to reiterate the detailed reasons stated by the Enquiry Officer in rejecting charges Nos. 2 and 3 leveled against delinquent officer, so also detailed reasons stated by the Disciplinary Committee headed by Justice N.G. Nandi in exonerating the delinquent officer of all the three charges leveled against him. Disciplinary Committee headed by Justice N.G. Nandi in its decision dated 8.4.2003 in respect of Departmental Enquiry No. 3/99 has referred to various pronouncements of the Supreme Court placed before it and came to the conclusion that the application of principle for or against grant of bail would depend upon the facts of each case. Order granting or refusing bail is a judicial opinion and judicial opinion some time differs and possibility of arriving at different conclusion can hardly be a ground to hold that the order passed is flimsy or on imaginary ground. The Committee concluded that the judicial orders passed in ignorance of the settled legal position would not by itself constitute a misconduct warranting initiation of Departmental proceedings under Gujarat Civil Services (Discipline and Appeal) Rules, 1971.

25. We are of the view that various bail orders passed by the delinquent officer has to be tested in the light of charges Nos. 2 and 3. Enquiry Officer has clearly found that Department had failed to prove that the delinquent officer had passed various bail orders with oblique motive and after receiving illegal gratification. The Enquiry Officer has also clearly found that the Department had failed to prove the charge of grave misconduct and the delinquent officer had acted

unbecoming of a judicial officer. These findings have been accepted by the Disciplinary Committee headed by Justice N.G. Nandi with regard to both the enquiry proceedings. The Apex Court in *Kashi Nath Roy (supra)* held that human element in justicing being an important element, computer-like functioning cannot be expected of the courts; however, hard they may try and keep themselves precedent-trodden in the scope of discretions and in the manner of judging. Whenever any such intolerable error is detected by or pointed out to a superior court, it is functionally required to correct that error and may, here and there, in an appropriate case, and in a manner befitting, maintaining the dignity of the court and independence of judiciary, convey its message in its judgment to the officer concerned through a process of reasoning, essentially persuasive, reasonable, mellow but clear, and result-orienting, but rarely as a rebuke. The premises that a Judge committed a mistake or an error beyond the limits of tolerance, is no ground to inflict condemnation on the Judge Subordinate, unless there existed something else and for exceptional grounds. Principle laid down by the Apex Court, in our view, clearly applies to the facts of this case. Judicial pronouncement in the absence of clear cut evidence of favouritism, lack of integrity, corrupt practices, extraneous consideration etc. cannot be the foundation of disciplinary proceedings or else it will affect the judicial freedom and independence. Judicial officers have to be saved to uphold the rule of law and the independence of judiciary. If the High Court entertains anonymous complaints which are frivolous or motivated and originated from unscrupulous lawyers and litigants, no judicial officers would be secure and would not be able to discharge their duties without fear or favour. Judicial officers especially dealing with bail matters, cannot dance to the tune or dictates of lawyers but has to act in accordance with the settled principles of law.

26. We have noticed that none of the bail orders with which we are concerned, granted by the delinquent officer, was questioned before the Appellate Court and no complaints had been filed by the complainant or the State against the delinquent officer either before the High Court on administrative side or before any other forum. Further witnesses 3 and 4 examined on the side of the prosecution had stated that they have no grievance against the delinquent officer during his tenure at Junagadh. None of the above witnesses had made any specific allegation against the delinquent officer, but only suspected his integrity. Suspicion, in our view cannot take place of proof and merely on conjectures and surmises and in the absence of any material evidence, we cannot point our finger against the delinquent officer. Court cannot merely infer oblique motive or corrupt practices against a judicial officer in the absence of any evidence worth mentioning. On facts we fully concur with the views expressed by Enquiry Officer in Departmental Enquiry Nos. 3 and 9/99 in respect of all the charges except charge No. 1 in Departmental Enquiry No. 3. Disciplinary Committee headed by Justice N.G Nandi has also fully endorsed the view of the Enquiry Officer except charge No. 1 in Departmental Enquiry No. 3/99. With regard to charge No. 1 in the Departmental Enquiry No. 3/99, in our view, Disciplinary Committee headed

by Justice N.G Nandi had rightly come to the conclusion that in the absence of any evidence to prove charge Nos. 2 and 3, there was no justification in contending that some bail orders were issued contrary to the settled principle of law or due to corrupt practices or for illegal gratification.

27. We fully concur with the findings recorded by the Enquiry Officer in respect of Enquiry No. 9/99 and also the view expressed by the Disciplinary Committee headed by Justice N.G. Nandi. Enquiry Officer has clearly found that the Department could not adduce any evidence to show that delinquent officer had received any amount by way of illegal gratification in Criminal Case No. 568 of 1988 for acquitting the accused. It was also pointed out that the Department did not examine the prosecutor or any accused to establish that the delinquent officer had received any amount by way of illegal gratification. Without any material, either oral or documentary, it would not be correct to presume and draw inferences of receipt of any amount by way of illegal gratification. There must be some satisfactory evidence with regard to the demand/acceptance of illegal gratification by the delinquent officer. The view expressed by the Enquiry Officer was fully endorsed by the Disciplinary Committee headed by Justice N.G. Nandi. We are of the view that no further materials were available with the Disciplinary Committee headed by Justice B.J. Shethna to hold otherwise. We therefore, fully endorse with the view expressed by the Enquiry Officer in Departmental Enquiry No. 9/99, which was confirmed by the Disciplinary Committee headed by Justice N.G. Nandi.

28. We are also of the view that Full Court of the High Court has committed a serious error in entrusting the Departmental Enquiry again to the Disciplinary Committee headed by Justice B.J. Shethna, vide chamber decision dated 6.5.2003, when that Committee had earlier recorded a clear finding, though tentative, that all charges levelled against the delinquent officer were established and recommended for his dismissal from service under Rule 6 of the Gujarat Civil Services (Discipline & Appeal) Rules, 1971. Disciplinary Committee headed by Justice B.J. Shethna had already pre-judged the issue and hence, we fail to see how High Court could again entrust the enquiry to the same Disciplinary Committee, especially in the wake of a contrary report submitted by the Disciplinary Committee headed by Justice N.G. Nandi. The procedure followed by the High Court, in our view, is illegal, arbitrary and violative of principles of natural justice and Article 14 of the Constitution of India.

29. We are of the considered view that entrusting the enquiry to the same Committee would give rise to a real apprehension in the mind of the delinquent that he would not get justice because the Committee would be more inclined to uphold their view that the delinquent was guilty and to be dismissed from service. Bias in this case cannot be said to be unreal, it is real and substantial. It is trite law that a person who tries a cause should be able to deal with the matter before him objectively, fairly and impartially. No one can act in a decision making process if his previous conduct gives ground for believing that he cannot act with

open mind. The cumulative effect of all the circumstances of this case is sufficient to create in the mind of a reasonable man an impression that there was likelihood of bias in the Disciplinary Committee headed by Justice B.J. Shethna, since the Committee had earlier expressed their views.

30. We may in this connection refer to the decision of the Apex Court in *Cantonment Executive Officer and Anr. v. Vijay D. Wani and Ors.* (2008) (12) SCC 230. In that case members of an Enquiry Committee were acting as a member of the Cantonment Board, which was to take final decision on imposition of penalty on the delinquent officer. The Court held that participation of three members in the Committee has given rise to real apprehension in the mind of the respondent that he will not get a fair justice in the matter because three Members who submitted the report would be interested to see that their report should be accepted. The Court held that bias in that case cannot be said to be unreal, and it was very much real and substantial and the respondent was not likely to get a fair deal by such Disciplinary Committee. We are therefore of the view that delinquent officer was justified in contending that order passed by the High Court accepting the report of the Disciplinary Committee headed by Justice B.J. Shethna and dismissing him from service is vitiated by bias and liable to be set aside.

31. We have also found that High Court has not stated any reason for disagreeing with the views expressed by Disciplinary Committee headed by Justice N.G. Nandi while taking a decision on 6.5.2003. High Court has only stated that the House is not accepting the report exonerating delinquent officer. Reason why it is not accepting the report is not discernible from the proceedings of the High Court on 6.5.2003. Practice followed by various High Courts in the country is that from time to time a Disciplinary Committee is appointed by the Chief Justice, which normally consists of senior Judges and the decisions and recommendations are generally accepted by the High Court, unless there are some cogent reasons for disagreement with the recommendations. No reasons were stated by the High Court in disagreeing with the report submitted by the Committee headed by Justice N.G. Nandi. Non-application of mind by the Chamber is writ large on the decision taken on 6.5.2003. Chamber Committee, in our view, had not only not stated any reasons in its order dated 6.5.2003 for accepting the report submitted by the Disciplinary Committee headed by Justice N.G. Nandi, but made a further serious error in entrusting the enquiry to the earlier Disciplinary Committee headed by Justice B.J. Shethna, which had already pre-judged the issue. The decision of the High Court is, therefore, vitiated by non-application of mind as well as legal and factual bias.

32. Article 235 of the Constitution of India confers considerable powers on the High Court to control and supervise the District Courts and Courts subordinate to it. Legal position has been elaborately considered by the Apex Court in *Yogin Bagde's case* (supra), hence, needs no further elaboration. As per the rules of business regarding administration of subordinate judiciary, a unit Judge shall be

in-charge of one unit district, ordinarily. As per the rule of business, the Unit Judge in-charge is empowered to monitor and supervise the functioning of the District of which he is in charge. The Principal District Judge in-charge is also empowered under the Civil Manual to supervise the subordinate Judges working under him. The quality of judicial work, the knowledge of law and methods and practice followed by them, the conduct and behaviour of the judicial officers inside and outside the Court are also subject to the scrutiny by the Administrative Judge in-charge as well as the Principal District Judge. High Court has issued various Circulars by which Principal District Judges are expected to express their opinion about the ability of the judicial officers in discharge of his judicial functions. The delinquent officer was working at Junagadh as well as at Bharuch during the relevant point of time. We have called for the confidential report of the delinquent officer for the period from 4.5.1998 to 31.12.1998, 1.1.1998 to 13.7.1999, 14.7.1999 to 22.9.1999. During the above period the delinquent officer had issued orders on various bail applications. It is pertinent to note that in the confidential report dated 28.4.1999 for the period from 4.5.1998 to 31.12.1998, it has been clearly remarked that during the said period the delinquent officer had depicted sufficient understanding of the legal principles and precedence. Further it is also recorded that his discussion and appreciation of evidence while writing judgment was proper. Further in the confidential report for the period from 1.1.1999 to 13.7.1999, it was reported that his discussion of law and facts in judgments and orders was proper. Same is the situation for period from 10.6.1991 to 12.6.1994. During the said period delinquent officer was discharging his duties as Joint Civil Judge and Judicial Magistrate First Class at Bharuch, the subject matter of Departmental Enquiry No. 9/99. Confidential report of the delinquent officer was unblemished and at times it was rated as good and very good in the matter of disposal.

33. We may caution that great care has to be taken by the Unit Judge in-charge while recording his opinion in the confidential reports. If proper assessment of the functioning of the judicial officer as well as the quality of the judgments and orders are not correctly reported, same would affect the functioning of the subordinate courts and thereby erode the faith of the people in judicial system. We are sure that serious thought would be bestowed by the High Court in that regard. So far as this case is concerned, we have already indicated that the confidential report of the delinquent officer was unblemished, that is also an added factor to hold that various bail orders issued by him during the said period could not be subjected to disciplinary proceedings unless and until it is shown that such orders were tainted due to corrupt practices or issued for extraneous reasons, which are lacking in this case apart from the mere allegations raised in an anonymous complaint raised against judicial officers.

34. Chamber Meeting in which all the Judges of the High Court are expected to participate is a serious meeting, where important decisions touching the administration of the entire judiciary is taken. Larger the Committee, lesser the application of mind, which is a hard reality, but members of quorum are free to

express their views, but at times too much of views and opinions takes the House from the real issue and leads to unchartered areas just like the present case. If serious thought was bestowed on the issue in the Chamber meeting held on 6.5.2003, then the High Court would not have entrusted the enquiry to the Committee which had already pre-judged the issue, which we have already found was a serious legal infirmity. We are sure that the Chamber would be more watchful and circumspect when such issue comes up for deliberations before it in future and would not be carried away by personal views or predilection.

35. We are therefore, of the considered view that the order passed by the High Court in accepting the report submitted by the Committee headed by Justice B.J. Shethna was illegal and also the consequent decision taken to dismiss the delinquent officer from service and also the Notification issued by the Government dated 13.4.2006 imposing punishment of dismissal on the delinquent officer. We therefore set aside all those orders and direct the respondents to reinstate the delinquent officer forthwith, who will be entitled for all service benefits, but only 50% of the salary and other benefits, since he was not functioning as judicial officer for last 10 years. We also award costs of Rs. 15,000/- towards legal expenses to the petitioner to be paid by the High Court.