
(1994) 01 GUJ CK 0005
In the Gujarat High Court

State of Gujarat

APPELLANT

Vs

Harish Laxman Solanki

RESPONDENT

Date of Decision : 13-01-1994

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 324, 436, 437, 438

Citation : (1994) 1 GLR 581

Hon'ble Judges : K.R. Vyas, J;K.J. Vaidya, J

Bench : Division Bench

Judgement

K.J. Vaidya, J.—Two questions of quite great public importance baffling this Court and perhaps many others day-in and day-out have arisen for consideration in this Office Objection matter. They are : Firstly, "Whether in view of the hundreds and thousands of the accused who are found not traceable and absconding one after another, after their acquittals, and thereby not available to be served with the Warrants and/or Notices of this Court after the appeals/ revisions are admitted against them, in the overall interest of justice, though there is no express provision in the Criminal Procedure Code, 1973 on the point, this Court would be still justified in directing the sub-ordinate Courts to take bonds and bail-bonds from the concerned accused as well as their sureties, by way of security for the purpose of making them available to face not only the investigation and the trial proceedings but also the appellate one and thereby to take ultimate orders that may be passed against them?" And, as the off-shoot of the first question - Secondly, "Whether in a given case if the accused is not released on bail pending trial, and is ultimately acquitted, then in such cases also before releasing him, he and/or his sureties should be asked to furnish bail-bonds alongwith his permanent residential address, etc., so as to secure his presence at the time of hearing of the appeal/ revision before appellate Court and to honour whatever orders that may be passed against him?"

2. These two questions arise this way - The respondent-Harish Laxman Solanki who came to be tried by the learned Additional Sessions Judge, Jamnagar, in

Sessions Case No. 25 of 1990 for the alleged offences punishable under Sections 302 and 324 of the I.P.C., was at the end of the trial, by the judgment and order dated 13-8-1990 ordered to be acquitted, giving rise to the present appeal, wherein this Court [Coram : N.J. Pandya & S.M. Soni, JJ.] on 3-7-1991 passed the following order:

Admit. Non-bailable warrant to issue.

Thereafter, despite several attempts, the police agency has been unable to serve the notice as well as the non-bailable warrant on the respondent for more than about two years. The last telegram dated 29-10-1993 also reveals that the police has no information regarding the respondent since about 2 years. Now this is not the problem arising in this appeal only, as in fact several such acquittal appeals are not just ready and stranded on the said ground alone. This indeed has created quite a serious problem for this Court because unless the accused is served, the matter cannot be said to be ready to be finally heard and decided! As a result, number of such unready matters for non-service have started piling up unnecessarily delaying their disposals adding thereby to the head-ache of the Administration of Justice! Not only that, but such non-services of notices, bailable or non-bailable warrants ultimately result into several other inconveniences such as - (i) time and again the ministerial staff of this Court has to prepare the Board and special notes for such objection matters to be listed for orders before the Court; (ii) it also consumes considerable precious time of this Court; (iii) the office of P.P. and for that purpose the police officer of the concerned area also have to time and again enter into, what at times appears to be, an endless correspondence! This cycle many a times repeatedly goes on and on without any effective immediate results. The Criminal Procedure Code, 1973 (for short "the Code") which has taken enough care to secure the attendance of the accused at the stage of investigation and trial by providing for interim bail and bail-bonds from the accused and his sureties on the basis of Form No. 45 in Schedule-11 of the Code, is unfortunately silent about the interim period between the order of acquittal and the acquittal appeals! It is this free-zone which is quite freely and conveniently exploited by accused, to the greatest disadvantage to the public justice! This sort of experience is quite embarrassing and frustrating to any judicial system. It is also against the overall public interest. In serious cases like murder, decoity, rape and such other serious offences like the one under the Narcotic Act, if after the acquittal appeals are admitted, the Court and the police machinery is required to chase the accused for the service, it is not only inconvenient but the same is ridiculous enough coming in the way of expeditious disposals of pending criminal matters. The criminal jurisprudence warrants that the cases - be it at the stage of investigation, trial or at the appellate stage, the same should be disposed of as expeditiously as possible in the overall interest of - both the accused as well as the prosecution. In this view of matter, it is indeed no more possible for this Court to bear and stand with such an embarrassing situation which is not only challenging and frustrating but as stated above, has unnecessarily started over-burdening the Court work! Accordingly, in our opinion,

such a chronic and pasturing disease is required to be immediately remedied and that the same could be done in the following two ways only - Firstly, whenever any accused is arrested for the alleged offence and applies for bail, the subordinate Court should see to it that bail-bonds from him and his sureties are taken, not only for the limited purpose of securing his presence at the stage of investigation and trial, but the same should also cover the proceedings before the appellate Courts. Secondly, if for whatever reasons, the accused was not released on bail at the time of trial and ultimately is acquitted, then in that case also before releasing him, he should be asked to furnish the bonds and the sureties to the satisfaction of the Court for the purpose of making him available to take whatever order that may be passed against him by the appellate Court. It appears that in all probabilities due to some inadvertence the important provision regarding securing the presence of the accused at the appellate stage after their acquittals, stands missed so far! Now in order to appreciate this aspect in proper perspective, it would indeed be quite useful to have a look at the relevant Form No. 45, in Schedule It of the Code, which pertains to "Bonds and Bail-Bonds for Attendance before Officer In-charge of Police Station or Court" (Ref : Sections 436, 437, 438 and 441).

Form No. 45

I, (name) ... of ... (place), having been arrested or detained without warrant by the Officer in-charge of...Police Station (or having been brought before the Court of...,...), charged with the offence of ... and required to give security for my attendance before such officer or Court on condition that I shall attend such officer or Court on every day on which any investigation or trial is held with regard to such charge, and in case of my making default herein, I bind myself to forfeit to Government the sum of rupees ... Dated, this ... day of ... 199.

(Signature)

I hereby declare myself (or we jointly and severally declare ourselves and each of us) surety (or sureties) for the abovesaid (named)...that he shall attend the Officer in-charge of ... Police Station or the Court of ... on every day on which any investigation into the charge is made or any trial on such charge is held, that he shall be, and appear, before such officer or Court for the purposes of such investigation or to answer the charge against him (as the case may be), and, in case of his making default herein, I hereby bind myself (or we, hereby bind ourselves) to forfeit to Government the sum of rupees

Dated, this ... day of ... 199....

(Signature)

On perusal of above Form No. 45, it could be seen that the same prescribes two proforma whereby the accused and sureties undertake to appear in the first instance before the Investigating Agency and in the second, before the trial Court to face trial proceedings. Thus, it could be further seen that the said Form

No. 45 is silent on the point as regard securing the attendance of the accused at the appellate stage! It is this silence which this Court desires to make it express and speaking! And, it is this gap, which this Court intends to bridge across, in the overall interest of justice! The reason is, the alleged Legislative silence and the laxity on the point appears to be the root cause of the anxiety and head-ache for the police as well as Court to secure presence of the accused in many cases when appeal is admitted against them! It is under these circumstances, that the question which we are required to deal with is "whether this Court in absence of express provisions providing for attendance of the accused at the appellate/ revisional stage can direct the sub-ordinate Courts to take bonds and bail-bonds from the accused as well as his sureties over and above the stage of investigation and trial, covering the appellate stage [?] more particularly, on the probable technical ground that the directions in question ultimately being in nature of amending the particular provision of the Code, it lies only within the province of the Legislature, and therefore, this Court should refrain from trespassing into the said field?" We having anxiously considered the pros and cons of the question involved, bearing in mind the overall interest of the accused on the one hand and that of the interest of justice, on the other hand, have reached to the conclusion that not only we are justified in directing the sub-ordinate Courts to take bonds and bail-bonds of the sureties covering the appellate stage but not to do the same would be permitting the cause of justice to unnecessarily suffer dishonour before our own eyes, displaying total ignorance of our own extraordinary powers u/s 482 of the Code. We feel that by virtue of Section 482 of the Code it is entirely within the powers of this Court to enunciate some useful directions which may take care of securing the ends of justice. Our ultimate conclusion for giving aforesaid directions to the sub-ordinate Courts rest on the following reasons, viz., Firstly, there is indeed no doubt that there is no express provision regarding taking of the bail and bail-bonds from the accused for covering the appellate stage, over and above the stage of investigation and trial, nonetheless, it also cannot be gainsaid that the termination of trial by itself is not a "be all and end all" of the proceedings against the accused as the appeal or revision is after all nothing but the further continuation of the proceedings against the accused. In other words, merely because the accused came to be acquitted thereby the proceedings cannot be said to have been finally terminated against him. In fact, there are special provisions regarding filing of appeals, revision, taking additional evidence, cancellation of bails, quashing proceedings, enhancement of sentence, remanding the case to the trial Court, etc. etc., which in very nature of things indicate that the same are nothing but the continuation of proceedings before the trial Court. These provisions also further make it abundantly clear that at the appellate/revisional stage, the accused is bound to take whatever orders that may be passed against him, after hearing him. Secondly, by directing the sub-ordinate Courts to take bail and bail-bonds of the accused and his sureties covering the appellate stage, what we are doing is simply extending the period of bail and bail-bonds for some more time thereby covering the appellate proceedings. Now such an extension of time period in

matter of bail-bonds from accused and his sureties can hardly cause any material inconvenience or hardships or prejudice to the accused in special, except the mechanical hyper-technical objection, viz., that it is none of the function of the High Court to legislate, forgetting altogether the existence of provision of Section 482 in the Code vesting extraordinary power to invoke inherent, jurisdiction to do anything reasonable which can secure the ends of justice! Thirdly, there is indeed no express provision in the Code or any bar, by virtue of which the High Court cannot exercise its inherent jurisdiction u/s 482 of the Code to secure ends of justice. We are conscious of the fact that inherent powers u/s 482 should be exercised quite sparingly, with utmost care and circumspection and in the rarest of the rare cases. Thus, after administering fullest caution to ourselves, this Court feels that there indeed cannot be any better and greater sparing exercise of the power u/s 482 of the Code than the one we have undertaken in this matter by adding something to aforesaid Form No. 45 by virtue of which the much needed care is taken to secure the ends of justice by obtaining attendance of the accused at the time hearing and deciding the appeal filed against him. Furthermore, it is also the duty of the High Court not to mechanically dispense with the justice by barely perusing the words printed in the statute books, for example, in the instant case, stopping at the bare reading of Form No. 45 and thereafter hopelessly suffering the pangs of non-service of notice/warrants of the absconding accused without able to do anything more in the direction. Rather, it is the foremost duty of this Court to see that the goal of justice is not obstructed and denied because of some procedural missing link! Forthly, we firmly believe that when usual meaning of the language fall short of the desirable object of the notice/warrant (as found in Form No. 45, above) more extended meaning can and should be attributed, if the same is fairly susceptible of it. Fifthly, it is indeed not unusual, and therefore, quite understandable that after getting acquittal, the guilty minded accused is always interested in keeping away, and therefore, manages to keep safe distance from the appellate Court apprehending reversal of the acquittal landing him in Jail. This he manages in various ways, many a times not unknown also. Under such circumstances, merely because the Legislature is silent on the point regarding securing his presence at the appellate stage, that cannot be permitted to be resulted into a helpless situation where the accused can conveniently exploit an inadvertent slip in not providing for some bail-bonds for securing his attendance at the appellate stage. In fact, these views and reasoning of ours are in a way duly supported by the classic observations made by Lord Denning made in *Seaford Court Estates Ltd. v. Asbex* reported in 1949 (2) All ER 155, where it has been observed that:

When a defect appears, a Judge cannot simply fold his hands and blame the draftsman. He must sit to work on the constructive task of finding the intention of Parliament...and then he must supplement the written word so as to give "force and life" to the intention of the legislature. A Judge should ask himself the question how if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they

would have done. A Judge must not alter alter material of which the Act is woven, but he can and should iron out the creases.

In view of the aforesaid discussion, we earnestly feel that since the Code is silent on the point of securing attendance of the accused at the appellate stage, we as a matter of duty must exercise our extraordinary inherent powers u/s 482 of the Code by calling upon all the sub-ordinate Courts to take bail and bail-bonds from the accused as well as his surety/ies not only to cover the stage of investigation and trial but also the appeal and revisional as well. Accordingly, we direct that while accepting the bail and bail-bonds for securing attendance before the Officer in-charge of the Police Station or Court, as provided in Form No. 45 in Schedule-11 of the Code, all the Criminal Courts shall also take the same covering the appellate as well as revisional stage. Incidentally, it may be pointed out that in cases for whatever reasons pending trial, if the accused are not on bail, in such cases, at the time either of refusing the bail application and/or thereafter approximately three months prior to conclusion of the trial, the accused should be informed to be ready with bail and bail-bond in the said regard, in t e event of necessity, at the end of trial. At this stage for two definite (sic), it is indeed necessary to fix some time-limit regarding the 1588, GUJA extended period of bail and bail-bonds to be taken from the accused and his surety covering the appellate stage. Firstly, it would not be just and fair to bound-down the accused and his sureties for indefinite period with uncertainty of hang-over of filing or not filing acquittal appeal before the High Court, and secondly, having regard to the fact that by the time the decision taking authority in the Legal Department ultimately decides to file an acquittal appeal and in the process the same is actually filed and listed for admission [if there is no delay], the same approximately take time of about 9 to 10 months. Under the circumstances, to balance the interests of the accused on the one hand and the society on the other, it would be quite reasonable if we direct the sub-ordinate Courts that while accepting the bail and bail-bonds for securing attendance of the accused before the appellate Court, the same should be taken for a further period of 12 months from the date of order of acquittal.

3. Our anxiety does not and indeed cannot be allowed to rest here simply with the direction to the sub-ordinate Courts, which of course will have binding effect on all of them. Taking into consideration the overall interest of the administration of justice, all throughout the country, and further with a view to see that rest of the States are also saved from annoying, inconveniences of the non-service of notice and/or warrants [till the time High Court of the concerned State come out with the guidelines on the lines suggested above], we hereby propose to the Legislature at Centre to come out with a special provision amending Form No. 45 in Schedule-11 of the Code. It is with this object in mind that we deem it proper to direct the Office to immediately forward a copy of this judgment to [i] Chairman, Law Commission, New Delhi and [ii] The Secretary, Ministry of Law, Justice & Company Affairs, Government of India, New Delhi for urgent consideration and necessary action.

The learned A.P.P. requested this Court to adjourn this matter for two weeks to enable him to take appropriate action in the matter. Hence, S.O. to 28th February, 1994.