
(1993) 09 GUJ CK 0026
In the Gujarat High Court
Case No : Criminal Appeal No. 773 of 1993

State of Gujarat	Vs	APPELLANT
Ishwarbhai Harkhabhai Patel		RESPONDENT

Date of Decision : 21-09-1993

Acts Referred:

Factories Act, 1948 — Section 21(1), 87, 92, 93

Citation : (1994) 2 GLR 1047 : (1995) 1 LLJ 793

Hon'ble Judges : K.J. Vaidya, J

Bench : Single Bench

Judgement

1. This appeal for enhancement of sentence by the State of Gujarat, is directed against the impugned judgment and order of sentence dated 21.8.1991, rendered in Criminal Case No. 838 of 1991, by Shri N. C. Chaudhari, the learned J. M. F. C., Idar, wherein the respondent - Ishwarbhai Harkhabhai Patel, who came to be tried for the alleged offence punishable u/s 21(1)(i)(iv)(c) read with Section 92 of the Factories Act, 1948, on his pleading guilty came to be convicted for the same and sentenced to pay fine of Rs. 2,000/- and in default, to undergo S. I. for 20 days.

2. According to Mr. S. G. Patel, Factory Inspector, Ahmedabad, when he visited "Shri Sardar Patel Regional Oil Seeds Growers" Co-op. Union Ltd. " at Idar on 30.4.1991, it came to his notice that on 22.4.1991 at 9.05 hours, a serious accident had taken place wherein one Manoj Maganbhai Katara, an employee working in the said factory sustained injury as a result of which his left hand was cut-off right from elbow, as it got entangled in the conveyer belt of the machine. On the basis of this fact, the Factory Inspector file a complaint on 26.6.1991 against the respondent before the learned Magistrate, Idar for the aforesaid offences alleged against him. On the summons being served upon the respondent, he appeared before the Court by filing appearance of his learned Advocate Mr. K. M. Parmar. Thereafter on 21.8.1991, the

respondent submitted a purshis Exh. 5 stating therein (i) that the alleged offence

against him was his first offence, (ii) that he will not repeat the same in future, and (iii) that the lenient view be taken in the matter of sentence. Immediately thereafter, on the very day, this plea of guilty by the accused came to be recorded wherein he pleaded guilty and prayed for the mercy. The learned Magistrate accepting the said plea, convicted the respondent for the aforesaid alleged offences and sentenced to pay fine of Rs. 2,000/-, as stated above in para 1 of this judgment, giving rise to the present appeal for the enhancement of sentence.

3. Mr. K. C. Shah, the learned A. P. P. while challenging the impugned order of sentence submitted that the same on face of it was quite illegal and unjust being contrary to the statutory minimum sentence of fine of Rs. 5000/- as provided in Section 92 of the Act. Mr. Shah making good the above submissions has invited attention of this Court to the said Section 92 of the Act, in particular the proviso the

said Section which reads as under :

"92. General penalty for offences.-Save as it otherwise expressly provided in this Act and subject to the provisions of Section 93, if in, or in respect of, any factory there is any contravention of any of the provisions of this Act or of the any rules made thereunder or of any order in writing given thereunder, the occupier and manager of the factory shall each be guilty of an offence and punishable with imprisonment for a term which may extend to (two years) or with fine which may extend to (one lakh rupees) or with both, and if the contravention is continued after conviction, with a further fine which may extend to (one thousand rupees) for each day on which the contravention is so continued :

Provided that where contravention of any of the provisions of Chapter IV or any rule made thereunder or u/s 87 has resulted in an accident causing death or serious bodily injury, the fine shall not be less than (twenty five thousand rupees) in the case of accident causing death, and (five thousand rupees) in the case of an accident causing serious bodily injury."

Mr. Shah further submitted that the proviso to the aforesaid section makes it amply clear that in case of accident causing serious bodily injury, the accused was liable to be punished at least with a fine not less than Rs. 5,000/-. On the basis of these submissions, Mr. Shah finally urged that since the impugned order of sentences is ex-facie illegal, this appeal for the enhancement of sentence deserves to be allowed, and accordingly, the impugned order of the fine shall have to be modified by sentencing the respondent to pay full amount of fine of Rs. 5000/-.

4. As against the above, Mr. Darshan Parikh, the learned Advocate for the respondent when confronted with the express provision of Section 92 of the Act prescribing the statutory minimum fine of Rs. 5000/- quite fairly conceded that the impugned order sentencing the respondent to pay fine of Rs. 2,000/- was ex-facie less than the minimum prescribed, and in that view of the matter, the same

shall have to be enhanced provided if it is held that this was not a case of "plea-bargaining." Mr. Parikh further submitted that taking into consideration the facts and circumstances, this case appears to be more or less a case of "plea-bargaining." Mr. Parikh further submitted that taking into consideration the facts and circumstances, this case appears to be more or less a case of "plea-bargaining" otherwise, there was no necessity for the respondent to straightway plead guilty to the charge. On the basis of this submissions, it was finally urged by Mr. Parikh that once it is found that the impugned order of sentence was a result of "plea-bargaining" the matter shall have to be remanded to the trial Court to be decided on merits according to law.

5. Now on carefully examining the record, it is indeed not possible to accept the submissions made by Mr. Parikh that this was a case of "plea-bargaining". The reasons for holding so are three fold - firstly, because the learned Magistrate in para-2 of his judgment has specifically stated that (i) the accused has pleaded guilty quite voluntarily, (ii) for that, he has passed a written purshis duly signed by him, (iii) that before recording the plea of guilty, neither any inducement nor threat has been administered to the accused and (iv) since the said plea of guilty was absolutely voluntary, the same has been accepted. Secondly, this is a case wherein in the complaint itself, it has been clearly stated that for the alleged offence u/s 21(1)(iv)(c) of the Act, the sentence provided in proviso of fine of Rs. 5,000/-. Thirdly, in the instant case, the respondent was represented by his learned Advocate Mr. K. M. Parmar and in that view of the matter, ordinarily, (i) it indeed cannot be believed that he was unaware of the legal consequences that may ensue when knowing full well he pleaded guilty, viz., that he will be visited with minimum sentence of fine of Rs. 5000/- even if he pleads guilty and (ii) that the learned member of the bar belonging to the noble profession would not be that much unethical to stoop so low as to be a party to the "plea-bargaining" which is nothing less than fraud on law and justice. In fact, it is really unfortunate and shocking too that in the present case, the learned Magistrate has neither cared to peruse the complaint wherein, as stated above, it has been expressly mentioned that the minimum sentence provided for the alleged offence was fine not less than Rs. 5,000/-; not the relevant provisions of Section 92 of the Act; not perhaps it appears that he was even conscious of the underlying the beneficial piece of legislation, viz. The Factories Act, 1948. Under the circumstances, such gross defiance of the Legislative mandate itself cannot be said to be a simple violation of law, and that too not by the owner or the occupier of the factory, but by the learned Magistrate himself, who is ordinarily expected to uphold the dignity and honour of the object underling the law on the one hand and the cause of justice for weaker section like the working class on the other. Such gross defiance of law, prima facie is serious dereliction of duty and unbecoming on the part of any learned Magistrate, and therefore, the same is required to be taken very serious note of, to sternly deal with it in the overall interest of administration of justice. In fact not to do so, perhaps, may embolden such erring learned Magistrates to discharge their duty carelessly and thereby

seriously undermine the basic structure of the "Rule of Law" where none other but the learned Magistrate himself is found to be violating the law; by not violating some stray provisions but altogether eradicating the very object underlying the Act. May be, that these sort of observations of the Court appear to be little caustic and inconvenient for the concerned learned Magistrate to bear, but it is seen to be believed that it echoes the extend of hurt and damage caused to the judicial conscience and overall labour justice. Such patently indiscreet act of "plea-bargaining" cannot be defended on the ground of some inadvertence as every as every learned Magistrate is bound to be aware of his duties in matter of upholding the honour and enforcing the spirit of law. Rather, every Court is supposed to know that "justice" is not a matter of personal property and charity but it has a nexus with the public interest, and it has got to be administered accordingly. In fact, to take such malignant attitude and mal-practice of "plea-bargaining" by some of the learned Magistrate lightly would be indirectly permitting them to go on frustrating such beneficial piece of legislation with total impunity. This Court, as a matter of fact, has come across hundreds of such cases wherein such defiance of labour laws by some of the learned Magistrates have become an order of the day! It is under such compelling circumstances only, that to arrest the alarming unconcerned attitude of the learned Magistrates in effectively attending the Labour justice, that this Court is constrained to make point-blank observations on pages of this judgment. Accordingly, it is indeed high time to take little stricter view of the matter, against the erring learned Magistrates, which this Court desires to do in the following two ways : (i) in the first instance, by sending observations made by this Court in such type of cases to the concerned District and Session Judges by requesting them to hold inquiry and call for explanation from the delinquents and thereafter submit their report to the concerned Hon"ble Units Judge of this Court. (ii) Not only that but in each and every case of "plea-bargaining" where the learned Magistrate inflicts sentence less than the minimum prescribed, then in that case, in the first instance, he shall forward a copy of the impugned judgment and order to the concerned District and Session Judge, and in the second instance, to the High Court. On receipt of such judgment and order, if the learned District Judge finds that the sentence inflicted upon the respondent is less than the minimum it shall be his duty to hold inquiry against such erring Magistrate, and thereafter, pass appropriate orders after hearing him. Similarly, office of the High Court, on receipt of such orders, shall place the matter before the concerned Court taking up such matter in appeal for admission. Thus, the aforesaid first direction will take care of maintaining discipline and brining the subordinate Magistrate within the legal bounds on the administrative side and the second direction will correct the impugned judgment and order on the judicial side. Of course, this does not mean that the aggrieved complainant should not file appeal for enhancement of the sentence. generally, it is only when some grievance is made by the aggrieved complainant before the High Court, that despite the fact that statute has provided minimum sentence, the learned Magistrate has awarded less than that, and in those cases only, the High Court enhances the sentence or remands the

cases on the ground of "plea-bargaining", as the case may be. This sort of incidental and once a while remanding by the High Court appears to be nothing more than treating the case merely symptomically rather than treating the real and root cause of the disease itself. Taking into consideration the fact that the disease of "plea-bargaining" and getting away with the lighter sentence despite number of judgments on the elementary point of law has become a growing chronic disease it is required to be treated intensively and deep-rootedly so that it can be effectively dealt with and eradicated, once and for all. Moreover, one can quite understand sometimes some honest error made in appreciation of the evidence and/or in interpreting any provisions of law but it is indeed difficult to understand as to how the learned Magistrate can ever ignore the express mandate of law prescribing the minimum sentence to be awarded in some cases! Lord Denning in a decision rendered in case of *Seaford Court Estates Ltd. v. Asher*, reported in 1949 (2) All ER 155 has 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 the Parliament... and then he must supplement the written words 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 truck 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 the material of which the Act is woven, but he can and should iron out the creases"! No doubt there is no case of blaming the draftsman in this case, yet at the same time with a definite view to give "force and life" to the intention of the Legislature, this Court in absolute interest of the working class and public at large would like to give direction to all the learned Magistrates to forward a copy of impugned judgments and orders wherein the sentence of fine is inflicted less than minimum prescribed in the relevant statutes in the first instance to the concerned District and Sessions Judge, and in the second instance to the High Court, as discussed above, as discussed above.

5. 1. In view of the aforesaid discussions, the office is directed to forward a copy of this judgment to the learned District and Sessions Judge to at once hold inquiry into the matter and call for explanation from the concerned Magistrate as to why and under what circumstances despite the minimum sentence prescribed u/s 92 of the Act, he imposed less than the minimum and forward his report along with his observations to the concerned Unit Judge of this Court for appropriate action.

6. In view of the aforesaid discussion, since the impugned order of fine of Rs. 2,000/- is ex-facie illegal, being less than the statutory minimum of Rs. 5,000/- prescribed u/s 92, this Court is under obligation to enhance the same to the tune of Rs. 5,000/- (Rupees Five Thousand only).

7. In the result, this appeal is allowed. The impugned order of sentence passed against the respondent by the trial Court is accordingly modified. The sentence of fine is enhanced from Rs. 2,000/- to Rs. 5,000/-, and accordingly, the

respondent is directed to pay balance amount of Rs. 3,000/- (Rupees three thousand) on or before 10th November, 1993, in default to undergo S. I. for three months.