
(1980) 03 GUJ CK 0034
In the Gujarat High Court

State of Gujarat

APPELLANT

Vs

Jashrajbhat Tagabhai Gohil

RESPONDENT

Date of Decision : 07-03-1980

Acts Referred:

Minimum Wages Act, 1948 — Section 22A, 22A

Citation : (1980) 21 GLR 994

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

Bench : Single Bench

Judgement

M.K. Shah, J.—These two appeals filed by the State are directed against the orders passed by the learned Chief Judicial Magistrate, First class, Palanpur before whom, the respondent-original accused who is the same in both the cases, was tried for the offence punishable u/s 22-A of the Minimum Wages Act, 1948 ("the Act") and was sentenced to pay a fine of Rs. 10/-, in default, 7 days" S. I. in case No. 85 of 1979 from which arises criminal No. 467 of 1979 and fine of Rs. 15/- in default, 7 days" S. I. in case No. 87 of 1979 from which arises criminal appeal No. 468 of 1979. In the first mentioned case, the prosecution was launched for breach of rules 21(4) and 25(2) of the Minimum Wages Rules, 1961 ("the Rules"); while in the other case, the same was for breach of Rules 26(1), 26(2) and 26(5) of the Rules, infer alia for not maintaining a muster roll, pay roll and not issuing pay slips. The complaint was filed by the Minimum Wage Inspector, Palanpur in both the cases.

2. The learned Magistrate then recorded the plea of the accused and on the accused pleading guilty, he accepted the same and passed the impugned orders of conviction and sentence in both the cases, aggrieved by which orders, so far as the sentence is concerned, the State has preferred these two appeals, for enhancement of sentence.

3. At the outset, it may be mentioned that Mr. Raval, the learned Advocate appearing for the accused-respondent in both the appeals, in response to the notice of the appeals served on the accused--for enhancement of sentence,

challenges the order of conviction on the ground that this is a clear case of plea bargaining and that the learned Chief Judicial Magistrate has passed the order of conviction - and sentence without applying his mind to the facts of the case.

4. Mr. Raval draws my attention to the orders passed in the instant case, particularly to the original order which is passed in case No. 87 of 1979 from which appeal No. 468 of 1979 arises. The complaint filed is on a printed form in which blanks are kept for filling in the name of the accused, rules for which breaches are alleged, the date on which the complainant-inspector visited the establishment of the accused and the particulars of the breaches alleged. On the back of this printed complaint with the blanks filled in as aforesaid, there is a rubber stamp affixed also containing some blanks which are filled in. In the rubber stamp, appears the question stating that ex. 1 that is the complaint was read over explained to the accused and he is asked as to whether he wants to defend the "proceedings and then in the rubber stamp, appears the word (reply) with a blank which is filled in by ink by inserting the words A" (I plead guilty to the charge). Then, there appears the word "fkk" (date) with a blank which is filled in by inserting 8-2-1979 in ink. Then, there is a rubber stamp with a blank below it and the words "J.F.M. Palanpur". In between these words appears illegible signature in ink as also addition of word "Chief before the word J.F. Magi. Palanpur. Then appears the order passed by the learned Magistrate which is also passed by filling in blanks in a rubber stamp impression in which sections of the Act are kept blank. Now here also, the words mentioned are 26(1) (2) (5)", that means-Minimum Wages-26 (1), 26(2) and 26(5). The amount of fine is also kept blank and it is filled in by inserting figure "15" and in the default clause also, the figure of days for which S. I. is imposed in default of payment of fine is kept blank and it is filled in by inserting figure "7" and then, against the word in rubber stamp, date 8-2-1979 appears with the signature. Above the rubber stamp Word "Palanpar" before which in blank, are inserted words "Chief Judicial Magistrate" and the date 8-2-1979", followed by a rubber stamp "fine paid" below which appears the figure of Rs. 10/ - in case No. 85 of 1979 and Rs. 15/- in case No. 87 of 1979.

5. This, therefore, shows the manner and method in which pleas of the accused persons are recorded in criminal cases and orders are passed by filling in blanks kept in a rubber stamp order which is impressed on the back of the printed complaint filed by the complainant. This practice, to say the least, is deplorable and does not befit any judicial institution. As is evident from the two orders here, at some places, even the rubber stamp is partly blurred and not legible. It is also evident that the learned Chief Judicial Magistrate has not fully applied his mind to the nature and gravity of the offence and the sentence which has to be awarded and which has to be in consonance therewith. He has mechanically passed the impugned stamp, orders without applying his mind. In the orders, the offences are described as the offences of committing breaches of certain rules under the Act and the punishing section is not mentioned, at all. Conviction cannot be recorded in such cases merely for breach of the rules unless the same is

rendered punishable by some provision in the Act.

6. The accused is to be convicted under the punishing section and that would be Section 22-A of the Act, but the rubber stamp orders show that he is convicted under the rules for which there cannot be any conviction, as such. The conviction would be under the section for breach of the rules or under the relevant section read with the relevant rules. Such a plea followed by imposing of a ridiculous sentence of fine of Rs. 10/- on two counts in one case and Rs. 15/- on three counts in the other case, smacks of plea bargaining and any plea recorded by following such method cannot be treated as a plea voluntarily recorded with full implication of the allegations made in the charge against the accused. Such a plea is not a plea in the eye of law and any order of conviction and sentence based on such a plea cannot be sustained.

7. The result of the above discussion will be that while dismissing the State's y appeals for enhancement of sentence, the orders of conviction and sentence passed by the learned Chief Judicial Magistrate, First Class, Palanpur in both the cases against the accused will have to be set aside and the matters remanded for trial afresh from the stage of reading over and explaining the contents of the charge or the complaint to the accused and then proceeding onwards from that stage according to law. Fine, if paid, to be refunded. Order accordingly.