
(1969) 10 GUJ CK 0009
In the Gujarat High Court

State of Gujarat

APPELLANT

Vs

Kanbi Vallabha and Others

RESPONDENT

Date of Decision : 28-10-1969

Acts Referred:

Bombay Prevention of Gambling Act, 1887 — Section 4, 5
Criminal Procedure Code, 1898 (CrPC) — Section 247
Penal Code, 1860 (IPC) — Section 160

Citation : (1970) 11 GLR 1042

Hon'ble Judges : Y.D. Desai, J

Bench : Single Bench

Judgement

Y.D. Desai, J.—The respondents-accused are 15 in number were charged with having committed offences under Sections 4 and 5 of the Bombay Prevention of Gambling Act in the Court of the Judicial Magistrate, First Class, Bagasara, in Criminal Case No. 542 of 1967. The learned Magistrate acquitted the accused u/s 247 of the Code of Criminal Procedure as the complainant was absent on 31-7-1967 on which date the matter stood adjourned for hearing. The State of Gujarat has come in appeal.

2. It is contended by the learned Assistant Government Pleader Mr. Nanavati that the learned Magistrate was in error in acquitting the accused since Section 247 of the Code of Criminal Procedure would not apply since the present case was not instituted under a complaint as denned in Section 4(1) (h) of the Code of Criminal Procedure and which does not include a report of a police officer.

3. u/s 4(1)(h) of the Criminal Procedure Code,

Complaint means the allegation made orally or in writing to a Magistrate with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but it does not include the report of a police officer.

4. Prima facie "the report of the police officer is not a complaint." In the opening

words of Section 247 Criminal Procedure Code "if the summons has been issued on a complaint." are seen then the section may not stand to apply unless the proceedings are started on a "complaint" as denned being filed and a summons issued. Offence under Sections 4 and 5 of the Bombay Prevention of Gambling Act are non-cognizable in character triable as a summons case. It is, however, contended that so far as offences under Sections 4 and 5 of the Act are concerned the Police Officer concerned had the authority to investigate the offence under power conferred on him and, therefore, the report filed by him would not constitute a "complaint". If that be so it would follow that Clause (B) of Sub-section (1) of Section 190 Cr. P.C. would stand to include the report of the police officer whether in a cognizable or a non-cognizable case, which would not be a "complaint" as defined.

5. It seems there has been a conflict of decisions regarding the interpretation of the expression "Report of a Police Officer", one view being that, it refers only to a report made by the police officer authorised to investigate a case under Chapter XIV and would include only the final report made by him. The other view appears to give a larger meaning to the expression so as to include any report made by the police officer whether in a cognizable or non-cognizable case and not being confined to a report made by a police officer u/s 173 Cr. P.C. While referring to Sections 207, 207-A and 251-A of the Code the words used are "police report" and not "report of a police officer" as introduced by the amendment of 1923. The learned Assistant Government Pleader relies on the ruling in *The State Vs. John Joseph D'Souza and Another*, in which the accused was charged u/s 65(b) read with Section 81 of the Bombay Prohibition Act, which was a cognizable case triable as a summons case. On the date of hearing the complainant was absent yet the learned Magistrate relying on Section 247 Cr. P. Code acquitted the accused. It was held that the section did not apply and the acquittal of the accused was improper. In the ruling in *State of Rajasthan Vs. Mahmood Ghazi Musalman and Another*, the accused was charged u/s 160 Indian Penal Code. It was a non-cognizable case and after considering the ruling of different High Courts it was held that the accused could not be acquitted u/s 247 Criminal Procedure Code.

6. It appears that before the decision of the Supreme Court in *Pravin Chandra Mody Vs. State of Andhra Pradesh*, the expression "police report" only included report made u/s 173 Cr. P.C. under an investigation made under Chapter XIV of the Code and not the report of the police officer in a non-cognizable case investigated without the orders of the Magistrate u/s 155(2) of the Code.

7. In *Pravinchandra's* case it was held that the words "police report" in Section 251-A were wide enough to include any report of the police officer though it may not stand to fall within the ambit u/s 173 and may as well relate to a non-cognizable case investigated by a police officer without the order of the Magistrate. It is held therein that the report in writing of the facts constituting the offence made by police officer in Section 193(1)(b) and the words "police

officer" in Section 251-A of the Code meant the same thing and that in both these cases the expression used were wide enough to include a report made by the police officer, whether it fell within the ambit u/s 173 of the Code or not. In short these expressions are held to have an almost identical meaning. We are bound by the principle laid down. I am not shown that the view held in Pravinchandras" case has been reconsidered by the Supreme Court.

8. It, therefore, cannot be said that the proceedings in this case were instituted on a "Complaint" as defined which does not include the report of a police officer, no matter whether the case was a non-cognizable case triable as a summons case and triable summarily. Section 247 of the Code would, therefore, not apply with the result that the order of the acquittal made by the learned Magistrate was not permissible and must be held to be bad.

9. Mr. Vyas learned advocate for the respondents was heard to say that in the event of the order being set aside, I should use the discretion and release accused u/s 249 Cr. P.C. That discretion u/s 249 Cr. P.C. is to be exercised before delivery of judgment by the Magistrate concerned and I see no reason why that discretion should be exercised in the fact of this case assuming that I can exercise those powers u/s 249 Cr. P.C.

10. The State succeeds on a point of law and on a technical aspect of it. I cannot help observing that in the facts of the present case the accused, who are as many as 15 in number had to attend the Court nearly thrice without the complainant being present. It also appears that the witnesses required to be examined were not present on 28-6-67 and on an application for time given by the Police Prosecutor the case was adjourned for hearing to 12-7-1967 when also the complainant was absent. He was again absent on 26-7-1967 as also on 27-7-1967 when both the complainant as well as the Police Prosecutor were absent, although on the aforesaid dates all the 15 accused were present. Merely because the matter was adjourned for passing order on an application Ex. 45 in the case and to record the statements of the accused, there was hardly any justification for the complainant remaining absent since in substance the matter was fixed for hearing and not merely to record the statement of the accused. The complainant cannot shelter behind the daily case diary so mentioning. There was no apparent reason for the police prosecutor to have remained absent. The harassment caused to the 15 accused is obvious. Merely because proceedings are started on a police report does not give a license to the Police Officer concerned to attend the Court when he chooses to do so. Prosecuting agencies including the Police Prosecutors and Courts all alike have a duty cast on them to see that criminal cases are not delayed on flimsy or vague grounds somehow seeking to explain away the absence of the Investigating Officer or the witnesses.

11. On facts the appellant hardly seems to have any case. The State succeeds on a technical grounds. In the facts of this case, absence of the complainant on several dates fixed for hearing and the absent of Police Prosecutor on 31-7-1967, in my opinion, requires to be investigated by the authorities concerned so that

public time and money which seems to have been wasted in this case, may not be so wasted in future and the accused similarly placed, as in this case may not stand to suffer.

12. A copy of this judgment be sent to the State Government for being forwarded to the authorities concerned for taking suitable action as they may think fit in the light of observations made in this case.

The appeal is allowed. The order acquitting the respondents is set aside and the matter is sent back to the trial Court for disposal according to law.