
(1993) 12 GUJ CK 0009
In the Gujarat High Court

State of Gujarat

APPELLANT

Vs

Kantilal Ambalal Patel

RESPONDENT

Date of Decision : 17-12-1993

Acts Referred:

Cattle Trespass Act, 1871 — Section 20

Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981 — Clause 16

Citation : (1994) 1 GLR 571

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

Bench : Single Bench

Judgement

K.J. Vaidya, J.—The three important questions that surface for consideration in this acquittal appeal are - Firstly, "whether it is open to the trial Court to straightway accept the "plea-of-guilty" and immediately thereupon record the order of conviction and sentence without issuing notice to the learned P.P. and for that purpose [when not represented by the learned P.P.] to the learned Advocate for the complainant to enable him to make submission either on the acceptance of the said "plea-of-guilty" and/or Order of sentence to be passed?"

Secondly, "whether the contravention of Clause 16 of the Gujarat Essential Articles [Licensing, Control & Stock Declaration] Order, 1981, framed under the Essential Commodities Act, 1955 can ever be termed to be a "Technical Offence" or the same is quite grave and serious enough to be lightly countenanced, while awarding the sentence?"

AND

Thirdly, "What is the meaning of the term "Technical Offence"?"

2. Few relevant facts leading to above three questions : According to the prosecution, when Shri A.V. Padhya, Supply Inspector, Mehsana on 11-11-1986 inspected the Fair Price Shop of the respondent-Kantilal Ambalal Patel, situated at Market Yard, Plot No. 116, Kukarwada [Taluka Vijapur], he came across

certain irregularities and contraventions; in particular Clause"16 of the Gujarat Essential Articles [Licensing, Control & Stock Declaration] Order, 1981 [for short "the Order"] framed under the Essential Commodities Act, 1955 [hereinafter referred to as "the Act"] pertaining to not displaying the facts about the Opening-Stock and Price of the edible oil, and working hours at the conspicuous place of his business premises. On the basis of these allegations, the Civil Supply Inspector filed a complaint Exh. 1, dated 28-10-1987 against the respondent in the Court of learned Special Judge, Mehsana, which came to be registered as a Essential Commodity Case No. 11 of 1987, whereupon a bailable warrant in sum of Rs. 5,000/- was issued. Thereafter, it appears that for whatever reasons, the case could not be taken up till 10-9-1991 [for about four years, when ultimately the respondent appearing" before the Court pleaded guilty and prayed for mercy in the matter of sentence on the ground that the offence alleged against him was merely "technical" and that there was no evidence of charging customers more than the fixed rate. The learned trial Judge accepting the same convicted and sentenced him for the alleged offence punishable under Sections 3 and 7 of the Act, and sentenced him till rising of the Court and to pay fine of Rs. 100/- and in default, to undergo further S.I. for 15 days. It is under these circumstances that the State has been constrained to file the present appeal before this Court for enhancement of the sentence.

3. Now, it indeed cannot be disputed that for the alleged contravention of Clause 16 of the Order which is an offence u/s 3 of the Act, the punishment provided in Section 7(1)(a)(ii) is that of imprisonment for a period not less than 3 months but which may extend to 7 years, and shall also be liable to fine. In this view of the matter, not only the impugned order of sentence is unduly lenient and grossly inadequate but the same being contrary to the statutory minimum prescribed under the Act is also patently illegal. As a matter of fact, having regard to the facts and circumstances of the case, it appears that this is more or less a case of "plea-bargaining" and in that view of the matter, in the light of decisions of this Court rendered in cases of [i] State of Gujarat Vs. Thakorlal Keshavlal Rana and Another, , and [ii] State of Gujarat Vs. Rajesh Medical and General Stores and Others, , this case shall have to be remanded to the trial Court for de-novo trial. However, the matter does not simply rest here as something more is required to be stated to clarify the three important aspects having direct bearing on the procedural and sentencing process in the important matters of such a nature which have been raised by way of three questions at the top of this judgment. Accordingly, apart from the patent illegal "plea-bargaining" in the present case, in the first place, it appears that the trial Court has committed one more illegality in disposing of this case on the very day of the accused appearing before it and pleading guilty, without caring to issue the notice to the learned P.P., enabling him to make submissions on the point either of the acceptance of the said plea and/or that of sentence to be passed. Of course, as submitted by the learned P.P. it is quite true that the Criminal Procedure Code, 1973 nowhere lays down any direction to the trial Courts that

whenever accused pleads guilty it should stand-over the matter for sometime to enable the learned P.P. to make his submission for the same, but at the sometime, it is equally true that how to exercise the common sense while exercising the judicial discretion can never be a subject-matter of any legal provision. Thus, whether the plea should be accepted or not is a matter undoubtedly within the sole discretion of the trial Court, yet at the same time, the judicial pragmatism warrants that whenever the accused pleads guilty, it should not hasten and hush-up the matter by immediately accepting the same and imposing some trivial sentence, without even issuing notice to the learned P.P. with a view to avail him an opportunity if he has anything to say either against acceptance of plea of guilty and/or against the imposition of sentence. The reason is if such an opportunity is to given the learned P.P., what ought we know that he may, on his making suitable inquiry be in a position to point out that the accused pleading guilty is a person who was previously convicted for the same and/or such other offence[s] and in that view of the matter, in the first instance, he may persuade the Court not to accept the said "plea of guilty" and in the second instance, may point out that the offence alleged against the accused was liable to be punished with at least the minimum sentence. Accordingly, if the learned P.P. is successful enough to persuade the Court that the "plea of guilty" should not be accepted, the matter stands rested there and there only but as against that despite the objection of the learned P.P., if the Court is inclined to" accept the plea in question then in those cases where the statutory minimum punishment is prescribed, the Court may be saved from inadvertently imposing less than the minimum. Further, none of us can ever be oblivious to me fact that ordinarily when any person commits offence[s], he does not commit the same for the purpose of ultimately making clean-breast before the Court, when detected. Rather, in very nature of things, none is ordinarily that honest, truthful and sincere to admit his guilt which may ultimately land him in Jail. In fact, it is only when accused find himself in an uncomfortable tight-corner, inextricably clutched and thereby unable to come out of the same that he, only with an ingenious devices of throwing dust in the eyes of Court or when he is so induced to plead guilty by way of "plea-bargaining" that he pleads guilty in order to get away with the lighter sentence. Bearing in mind this sort of patent and obvious accused psychology and the resultant modus-operandi, if the learned P.P. is given the much needed opportunity of hearing him before accepting the so-called plea of guilty as well as passing of the order of sentence, the patent illegality as the one which has taken place in the instant case which usually creeps in, in all such matters, the same could be safely avoided! Thus, a little exercise of judicial pragmatism on the part of the trial Court at the time of recording plea of guilty could save not only the parties but the Court as well from the inconveniences and the wastage of precious public time and money resulting out of the multiplicity of proceedings! In this view of the matter, whenever the accused pleads guilty, the learned Magistrate/Judge shall not act upon it at once by accepting the same and dispose of the case by inflicting lighter sentence. Such a hasty disposal is not only illegal, being unfair to the prosecution, but the

same very much eclipses the image of the administration of Justice. Therefore, in such cases, it is the duty of every Court to issue notice to the learned P.P. and in case the complainant is not represented by the learned P.P. but by the private learned Advocate then in that case, to that concerned learned Advocate, and after hearing him fully whether the plea of guilty should be accepted or not, and if he reaches the conclusion that such a plea is required to be accepted, then after hearing him what should be the proper quantum of sentence [if the minimum sentence is not prescribed], the final order should be passed.

4. That takes us now to yet another aspect involved in the case, viz; whether the contravention of Clause 16 of the Order can be said to be a "technical offence"? Now, in order to appreciate this, it is indeed desirable first of all to refer to the said Clause 16, which reads as under:

16. Opening stock, price and working hours to be displayed at place of business : Every dealer or producer shall display at a conspicuous place of his business premises, the daily opening stock of essential articles wholesale or, as the case may be, retail prices of such essential articles and the working hours, in Gujarati language and in a manner so as to be easily accessible for consultation by the customers:

Provided that where any essential article is out of stock there shall be written in the display against the essential article the word "Out of Stock" instead of the prices.

Provided further that where retail price of any essential article is fixed by the Central Government or the State Government or manufacturer or distributor, the retail price so displayed shall not exceed the retail price so fixed.

5. On perusal of aforesaid Clause 16 of the Order, it is very clear that the State Government in its wisdom has rightly casted obligation on every dealer or producer of the essential commodities to disclose at the conspicuous place of his business premises, the daily opening stock of the essential articles, price of the same and working hours in Gujarati language so as to easily accessible for consultation by the customers. For this, there is indeed a definite object underlying Clause 16, viz., on the one hand to protect the customers from being induced with the false oral statement made by the dealer that the stock in question is not available and on the other hand to prevent him from being monetarily fleeced and robbed by arbitrarily charging exorbitant prices. These days, often we come across wide-spread complaints mat many a times, the licence-holders [Fair Price Shops] in order to black-market the essential commodities, conveniently say that no stock was available with them. Now under such circumstances, by virtue of Clause 16 when they are required to display either the daily opening stock of the essential commodities or if the stock is not available to mention "Out Of Stock" in a conspicuous part of the business premises, it would make impossible for them to mislead the customers approaching them by saying that no goods are available. Thus, the object

underlying engrafting of Clause 16 of the Order directing the dealer or producer to display the opening stock of the essential commodities is to protect the interest of customers from being denied their rightful regular quota on the one hand and on the other hand to prevent the licence-holders to dispose of the stock of essential commodities illegally in any other manner. Similar is the object of imposing a duty upon the dealer or producer to mention the "Price" at the conspicuous place. It is rightly (sic) left at the whims and caprice of such licence-holders to charge any (sic) as they like. It is only the "Price" fixed by the Government which he (sic) entitled to charge. This can be done only and only if there is a board (sic) the notice about the "Price" whereby the customer is not kept in (sic), to be taken by surprise and made to pay any price demanded of them! By (sic) type of checks, the dealer/producers in a way would be prevented from charging more than the fixed rate. Similarly, even the display of working hours at the conspicuous part of the business premises is equally important for the simple reason that the same is not merely for (he convenience of the customers but the same may as well prevent them from disposing of essential commodities in any illegal manner during the working hours. In substance, the aforesaid duties casted upon every producer/dealer of the essential commodities under Clause 16 of the Order is meant for public good of saving the people from being cheated and defrauded. The scarcely available essential commodities, we know have played havoc in the society, which has always resulted into black-marketing and the worst sufferer is the middle-class, poor people and the daily-wage earners. It is for the protection of these comparative economically weaker sections of the Society that the Fair Price Shops are opened and it is once again only for this reason that in order to prevent such persons from being dupped by scheming dealers/producers, in the first place, the Legislature came out with Special Act, viz Essential Commodities Act, 1955 and thereafter in the second place, to further effectively implement the spirit of me same, the State of Gujarat came out with the framing of Orders under Gujarat Essential Articles [Licensing, Control & Stock Declaration] Order, 1981. These are the Orders which have been framed to protect the public interest from being sabotaged by some scheming and unscrupulous black-marketers. In fact, the Legislature was constrained to enact the Special Act by way of Essential Commodities Act, 1955 for the obvious object "to check the inflationary trend and control price of essential articles so as to ensure equitable distribution of essential commodities. It was enacted in the interest of general public for control of production, supply and distribution of trade and commerce in commodities which are specified in the Act to be the essential commodities." Viewing the matter from this angle, and indeed there is no other way to view the same except the one from, it is really unfortunate and astounding to find that the learned trial Judge has accepted the alleged offence as a "technical offence" for awarding ridiculously low sentence, without understanding the gravity and seriousness of the provisions, as discussed above. In fact there appears to be clear distinction between "offence" and the "technical offence". The term "offence" has been defined u/s 2(n) of the Criminal Procedure Code, 1973, which means "any act or omission made punishable by any law for

the time-being in force and includes any act in respect of which a complaint may be made u/s 20 of the Cattle Trespass Act, 1871 [one of 1871]." Now, in the light of the said definition of "offence", let us try to appreciate and understand what is the meaning of the word "technical offence". Now, undoubtedly if the literal and face value meaning of the term "offence" as defined u/s 2(n) of the Act is to be accepted then the facts alleged in the present case clearly constitutes an "offence", more particularly when the term "technical offence" stands undefined anywhere. In this view of the matter, once the offence is proved and/or accused pleads guilty, he is required to be convicted for the same. Still however Courts doing justice while imposing sentence are not supposed to act mechanically and award the sentence, as it has yet one more important duty to be performed, viz., what would be the proper order of sentence in cases where statute has not prescribed the minimum sentence?! To make clear the concept, one or two examples as to what can be the probable meaning of the term "technical offence, we may endeavour to broadly point out the meaning of the same by giving one or two probable illustrations. For example, when the employer of any industrial unit is required to deposit Provident Fund Contribution on or before the stipulated date and that by the time the said amount could be forwarded and/or accepted, either because the office hours were over or the concerned clerk either at the end of the treasury or in the industry itself was, either sick or could not attend his work, and the said amount came to be deposited on the very next working day of the office, then in that case, it would not be possible to say that no offence has taken place, as apparently there is a clear infraction of the legal provisions, but yet at the same time, taking into consideration the bona fides of the accused, it can as well be termed as a "technical offence" as it took place out of sheer unavoidable situation. Under the circumstances, the Court would be quite hesitant to take stringent view of the matter while awarding the sentence on the ground that the facts alleged constitutes only a "technical offence" and may inflict lighter sentence [if permissible, that is, where no statutory minimum sentence is prescribed]. Similarly, in a given case, when a person having a regular driving-licence when asked by the cop to produce the same and is unable to produce it either because he had lost or forgotten to carry with him or had given to his agent for renewal, then in that case literally it can be said that he has committed an offence of driving his vehicle without licence, and therefore, to that extent has committed an offence. But at the same time, looking to the aforesaid circumstances, the offence alleged can reasonably be toned down and termed as a "technical offence" for the purpose of taking lighter view of the matter while awarding the sentence. These two are just broad and general illustrations wherein the alleged offence can be termed as a "technical offence" to take lighter view of the matter, if and only if the statutory minimum is not prescribed. Thus, "technical offence" is the one which is literally an offence, giving an appearance of the offence, yet at the same time, if we look at, the fact, and circumstances of the case would prima facie appear to be an offence having not that spark or spirit to persuade the Court to take stricter view of the matter. It is more or less in nature of a shadow, rather than the substance.

5.1. Accordingly, in view of the aforesaid discussion, by no stretch of imagination, it can ever be said that contravention of Clause 16 of the Order is in any way a "technical offence".

6. In the result, this appeal for enhancement of sentence fails and is dismissed. The impugned judgment and order is hereby quashed and set aside. The matter is remanded to the trial Court to be disposed of according to law, as expeditiously as possible, preferably on or before 30th August, 1994. Both the learned Advocates have assured this Court that the parties before the trial Court will assist the trial Court in disposing of the matter within the aforesaid stipulated time-period. The learned A.P.P. is directed to contact the original complainant and inform the concerned learned P.P. to see that the case is attended to and disposed of in the light of the directions given hereinabove.