

(1993) 09 GUJ CK 0051
In the Gujarat High Court

State of Gujarat

APPELLANT

Vs

Kantilal v. Bhatti

RESPONDENT

Date of Decision : 15-09-1993

Acts Referred:

Gujarat Co-operative Societies Act, 1961 — Section 108, 147(J), 148(J), 80, 81

Citation : (1994) 1 GLR 156

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

Bench : Single Bench

Judgement

K.J. Vaidya, J.—This appeal, by the State of Gujarat, is directed against the impugned judgment and order dated 31-1-1991, rendered in Criminal Case No. 798 of 1988, by the learned J.M.F.C., Rajkot, wherein the respondent-Kantilal V. Bhatti, who came to be prosecuted for the alleged offence punishable u/s 147(J) read with 148(J) of the Gujarat Cooperative Societies Act, 1961, was ordered to be pre-maturely acquitted on the short ground that when the case was called out and thereafter even till the Court time was over, neither the complainant nor his learned Advocate were present before the Court.

2. According to the prosecution, Mr. Parmanand Manilal Soni, Cooperation Officer in the office of the District Registrar of Co-operative Societies, Rajkot, filed a complaint on 5-3-1988 against the respondent alleging that he has failed to hand-over custody of some of the books, records, cash securities, etc., etc., belonging to the Society [of which he was an Officer] to a person appointed under Sections 80, 81 and 108 of the Act and u/s 147(J). On the very day, summons was issued on the respondent and thereafter for one reason or other, the case went on being adjourned from time to time till the time, respondent ultimately came to be acquitted by a short Order dated 31-1-1991, as stated above in para-1 of this judgment, giving rise to the present appeal.

3. Now, it is indeed quite unfortunate that neither the complainant nor his learned Advocate who were found absent all throughout the day, when the case was called out, they even did not care to submit application for adjourning the

case to some future date, at least through proxy, This indeed is quite annoying and disturbing too, to any Court particularly when the case called out is an old one. To this extent, there is no difficulty whatsoever in agreeing with the learned Magistrate that the complainant and his learned Advocate had committed a serious default in not remaining present before the Court and/or submitting an adjournment application on the date fixed for hearing. But, this finding of the fault of the complainant and his learned Advocate cannot be used as a lever to dispose of case and calling it a day. While trying the case, the learned Magistrate is supposed to know that he has been appointed essentially to do justice, and not to be short-tempered to dispose of the cases for the sake of disposal on some technical grounds. The very fact that on the alleged flimsy ground such an important case under the benevolent piece of legislation like the Co-operative Societies Act, on the last day of the month, i.e., 31st January, 1991 has been just thrown away prima facie goes to show that the learned Magistrate was somehow in unholy haste to get rid of the matter, perhaps, to get one more disposal rather deciding the same on merits! I wish, the inference drawn above by this Court is wrong, but in case it is true, it is indeed very shocking and unbecoming on the part of any learned Magistrate. If such important matters are to be thrown away in the light-hearted fashion then it is simply dereliction of duty, which cannot be justified merely because the complainant and his learned Advocate have failed to discharge duty on their respective parts. The learned Magistrates are supposed to know that there are cases and cases where the scheming accused do successfully manage to sabotage the prosecution case either by getting matter adjourned dates after dates for considerable long time or with the help of dishonest complainant and/or with the help of prosecuting witnesses by turning them hostile. This sort of game is not uncommon these days for the learned Magistrate to claim any ignorance about. It may be clarified that this Court not for a minute remotely even intends to suggest that in each and every case the complainant and prosecution witnesses on the one hand, and the accused on the other conspire with each other to sabotage the prosecution case. This indeed cannot be. However, at the sametime, the overall judicial pragmatism very much warrants that every Court should be alive to this possibility also so as not to be taken unaware by some such schemes and designs drafted outside the Court room. Accordingly, merely because the complainant, more particularly when he is a Government servant, does not appear before the Court on a day fixed for hearing that by itself is hardly a ground for any Court to be either mechanical or become an easy prey to some such scheming devices to dismiss the complaint. The Court always should be alive to the possibility of mischief also by no less a person than the complainant himself who blowing hot and cold, at one time set the criminal law in motion and then conveniently back out from the same, giving an easy walk-over to the accused. This type of games are also not uncommon with some of the public servants [complainants] who on the one hand completes the quota by filing complaints before the Court showing their efficiency and thereafter, schemingly oblige the accused by remaining absent on the dates fixed for hearing by the

Court ! This is not to say that in the present case also, the complainant is necessarily of the type discussed above. But, then, it is only when the Courts are fully alive to such possibilities that it can be said to be matured enough and better equipped to do proper justice. Moreover, the learned Magistrate while trying such cases wherein the public servant is the complainant, he should not ordinarily dismiss such complaints on the stock ground of absence of the complainant.

4. In view of the aforesaid discussion, since the learned Magistrate has failed to exercise proper judicial discretion, this appeal against the acquittal deserves to be allowed.

5. In the result, this appeal is allowed. The impugned judgment and order of acquittal is hereby quashed and set aside. The matter is remanded to the trial Court to be disposed of on merits according to law. Having regard to the facts and circumstances of the case, the learned Magistrate is directed to give top most priority. Office is directed to send a copy of this judgment to the District Registrar of Co-operative Societies [Liquidation], Rajkot.