
(1962) 07 GUJ CK 0002
In the Gujarat High Court

State of Gujarat

APPELLANT

Vs

Lasanmal Manumal Mangalani and Another

RESPONDENT

Date of Decision : 28-07-1962

Acts Referred:

Bombay Prohibition Act, 1949 — Section 24A
Bombay Reorganisation Act, 1960 — Section 92

Citation : (1963) CriLJ 533 : (1963) GLR 270

Hon'ble Judges : Shelat, J; Divan, J

Bench : Division Bench

Judgement

Shelat, J.

1-10. x x x x x x 11. It was next contended by Mr. Baxi that the Chemical Analyser's certificate was not admissible in evidence inasmuch as the Assistant Chemical Analyser who has signed the certificate is not the Assistant Chemical Analyser to the Government of Gujarat. Relying upon our judgment in Criminal Appeal No. 424 of 1961, D/- 19-6-1962 (Guj), where we considered the provisions of Section 510 of the Code of Criminal Procedure, Mr. Baxi argued that the Chemical Analyser or the Assistant Chemical Analyser whose certificate is made admissible u/s 510, Cr.P.C. must be a Chemical Analyser or an Assistant Chemical Analyser to the Government of the State where the prosecution is launched and, therefore, the Assistant Chemical Analyser, who has signed (the certificate in this case, being the Assistant Chemical Analyser attached to the State of Maharashtra, the certificate was not admissible. Now the raid and the seizure of the bottles in this case took place on January 27, 1960. The certificate of the Assistant Chemical Analyser is dated March 22, 1960. The first respondent was arrested on May 11, 1960 and the chargesheet was submitted in this case on May 27, 1960. Relying upon these dates, Mr. Baxi contended that the prosecution in this case can be said to have been launched on the date when the charge-sheet was submitted i.e. May 27, 1960 or in any event on May 11, 1960, when the offence was registered. He contended that that being the position, the prosecution must be held to have been launched in the State of Gujarat and,

therefore, any certificate by the Chemical Analyser or an Assistant Chemical Analyser to the Government of the State of Maharashtra cannot be said to be admissible u/s 510 of the Code. In our view, this contention is not correct. The prosecution can be said to have been launched on the date when the relevant Police Officer takes cognizance of the offence on information received by him. It is not correct to say that the prosecution commences only on the date when a complaint is filed in a Court of law. It is true that prosecution means alleging a person of some offence before a judicial authority; but that is not the only meaning of the word "prosecution". The prosecution only means a proceeding, whereby criminal law is set in motion against a person in respect of some offence. Therefore, the raid by the police officer of the first respondent's shop and the seizure of the bottles from that shop were acts or proceedings whereby criminal law was set in motion. As observed in *Salmond on Torts*, 12th Edition, page 691, in a suit for malicious prosecution, the defendant must be the person who sets [the law in motion against the plaintiff and it would not be necessary that he should be a party to the proceedings. Thus an action for malicious abuse of process will lie against a solicitor who in his client's name has set the law in motion against a plaintiff. It is not, therefore, always necessary for a prosecution to commence that a complaint must have been lodged before a judicial authority. When the police officer raided the first respondent's shop and seized the bottles, his acts in effect constituted a proceeding in reference to which the P.S.I. took various steps. Therefore, the prosecution must be said to have commenced from January 27, 1960. That proceeding was pending on the May 1, 1960, when the Bombay Reorganisation Act, 1960, came into force. By virtue of Section 92 of that Act, that proceeding came to be transferred to the new State. Consequently all that was done in that proceeding till then must be held to have been done with and under valid authority. Mr. Baxi however, contended that the proceeding contemplated by Section 92, must either mean a suit or a case or an appeal and that the acts of the P.S.I. on January, 27, 1960 cannot fall under anyone of these three categories. Sub-section (3) of Section 92 however provides that for the purposes of Section 92, "proceeding" includes any case, suit or appeal. The definition set out in Sub-section (3) of Section 92 is an inclusive definition. In any event, the word "case" has a wider connotation than the words "suit or appeal". Under Sub-section (1) of Section 92, every proceeding pending immediately before the appointed day before a Court (other than a High Court), tribunal, authority or officer in any area which on that day falls within the State of Maharashtra shall, if it is a proceeding relating exclusively to the transferred territory, stand transferred to the corresponding Court, tribunal, authority or officer in the State of Gujarat. It is clear from these provisions that the proceeding which commenced on January 27, 1960, in reference to which P.S.I. Patel took various steps viz., raiding the first respondent's shop, seizing the bottles, sending sample bottles to the Chemical Analyser for his analysis etc. amounted to a case within the meaning of Sub-section (3), which stood transferred to the corresponding officer of the State of Gujarat on bifurcation. The Assistant Chemical Analyser who on a requisition made by P.S.I. Patel

analysed the sample bottles and made his report as he was an officer competent to make the report as he was an officer attached to the Government of the State of Bombay as it then was, within whose territory the proceeding commenced on January, 27, 1960. It was within the territory of the State of Bombay, as it then was, in which the prosecution was launched and, therefore, the report of such a Chemical Analyser, though he became attached to the Government of the State of Maharashtra after bifurcation, was admissible u/s 510(1) of the Code of Criminal Procedure.

12. The last contention urged by Mr. Baxi was that the certificate, Ex. 2, does not contain any reasons for the conclusion set out therein; nor does it refer to any of the tests carried out by the Assistant Chemical Analyser; nor does it give any factual data as to the analysis made by the Assistant Chemical Analyser and therefore, no probative value can be given to it and the burden of proof to establish that the contents of the sample bottles were prohibited liquor being exclusively upon the prosecution, if no probative value is attached to the certificate, then in that event the prosecution can be said to have failed to prove its case against the first respondent. In support of this contention, Mr. Baxi relied upon the decision of *Suleman Usman Memon Vs. The State of Gujarat*, . That decision has since then been considered on two occasions, viz., in Criminal Appeal No. 49 of 1961, D/- 30-10-1961 (Guj) and Criminal Appeal No. 407 of 1961 D/- 27-2-1962 (Guj) and also by my brother Divan in Criminal Revn. Appln. No. 544 of 1961, D/- 3-5-1962 (Guj). Three principles emerge from these decisions, viz.:

(1) That the report of a Chemical Analyser is admissible u/s 510(1) of the Code of Criminal Procedure.

(2) That if the report of the Chemical Analyser does not contain reasons for arriving at a particular conclusion for if the report is not full and complete and does not disclose tests or experiments performed by the Chemical Analyser the factual data revealed by such tests or experiments and the reasons which led the Chemical Analyser to form his opinion, the probative value of such a report (would suffer.

(3) That it depends upon the facts of each particular case as to what the prosecution is required to prove in each particular case and in the light of that burden cast upon the prosecution, the question has to be examined whether the Chemical Analyser's report can be relied upon, and if it can be relied upon, to what extent it should be relied upon.

The question, therefore, is what probative value can be given to the certificate in this case. To put it in other way, does this certificate furnish necessary material to assist the Court in coming to its own conclusion with regard to the contents of the two sample bottles. Now, what the Assistant Chemical Analyser in this case was called upon to do was to analyse the contents of the two sample bottles and report as to their ingredients, so that the Court may come to its own decision as

to what the contents of the two sample bottles were. That is precisely what the Assistant Chemical Analyser has done in this case inasmuch as his certificate shows that the contents of the two sample bottles were alcohol and water. The certificate further shows that there was no recognizable medicinal ingredient. That being so, it is obvious that the contents of the two sample bottles were not medicinal products within the meaning of Section 24A of the Bombay Prohibition Act. Lastly, the certificate shows that the contents were not genuine eau-de-cologne, presumably because there were no essential oils found as a result of the analysis in the contents of the sample bottles, which were bound to be found if the contents of the two sample bottles were eau-de-cologne. Therefore, it would be possible from this analysis of the certificate for a Court to come to the conclusion that the sample bottles were neither toilet preparations nor medicinal products and cannot fall within the scope of Section 24A of the Act. The prosecution must, therefore, be held to have proved that the contents of the two sample bottles were prohibited liquor. In these circumstances, it cannot be said that the certificate has no probative value, nor was it a certificate from which the Court cannot come to its own conclusion.

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