

(1993) 09 GUJ CK 0017
In the Gujarat High Court

State of Gujarat

APPELLANT

Vs

Lohana Prakash Dayalji and Another

RESPONDENT

Date of Decision : 10-09-1993

Acts Referred:

Bombay Prohibition Act, 1949 — Section 65(b), 66(b)
Criminal Procedure Code, 1973 (CrPC) — Section 258
Penal Code, 1860 (IPC) — Section 336

Citation : (1994) 1 GLR 112

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 dtd. 2-2-1991, rendered in Criminal Case No. 6472 of 1989, by the learned J.M.F.C., Porbandar, wherein the respondent-Lohana Prakash Dayalji and one another, who came to be prosecuted for the alleged offences punishable under Sections 65(b), (c), (d), (e) and (f) and 66(b) of the Bombay Prohibition Act, 1949, and Section 336 of I.P.C., were ordered to be discharged following the dropping of the proceedings u/s 258 of the Criminal Procedure Code, 1973, on the short ground that despite the reasonable opportunity being given to the prosecution, the witnesses were not kept present.

2. According to the prosecution, on 1-4-1989 at 16-30 hours, on raiding one dilapidated building situated in Nava Kumbharwada, Street No. 17, at Porbandar, 56 bottles of English liquor were recovered from the possession of the respondents and were sent to the Chemical Analyser for the report. On receipt of the report that Ethyle was mixed with Methyle alcohol, after the investigation was over, the respondents came to be charge-sheeted to stand trial for the aforesaid alleged offences. It appears that the charge-sheet was filed on 25-5-1989 and thereafter the case went on being adjourned for one reason or the other and ultimately by the impugned order dated 2-2-1991, the learned Magistrate discharged the respondents as stated in detail in above para-1 of this judgment, giving rise to the present appeal.

3. Heard Mr. K.C. Shah, the learned A.P.P. for the appellant-State. On going through the record and proceedings of the case, prima facie, it is very clear that the offences alleged against the respondents are quite serious offences inasmuch as the consumption of such illicit liquor have brought about many shocking hooch tragedies in the State costing precious human lives of number of poor people. It is quite true that for whatever reason the prosecution has not examined the witnesses. But then having regard to the gravity of the alleged offences, the learned Magistrate should not have felt helpless in securing the presence of the witnesses before the Court in the public interest. It also appears from the record that the learned P.P. in-charge of the matter had submitted an application dated 2-2-1991 requesting the learned Magistrate to issue summons/warrant for examination of the witnesses, which unfortunately came to be rejected. Under such circumstances, on the one hand not to issue summons/warrant for the purpose of examining the witnesses and on the other hand to say that despite the reasonable opportunity being given, the prosecution has not examined the witnesses, is not in good taste. Apart from the said error of the learned Magistrate, the learned P.P. in-charge of the matter could have certainly kept the Police witnesses present before the Court and for that purpose, if the Police witnesses were, for whatever reasons, recalcitrant in appearing before the Court, the learned P.P. could have taken assistance of the D.S.P. of the area in order to secure their presence for the purpose of examination! It is hoped that such mistakes will not be repeated by the learned P.P. in future.

3.1. While parting, it will indeed be not out of place to mention that in view of number of such criminal cases failing one after another for want of examination of witnesses], the learned P.P.s in-charge of the such cases should be especially directed by respective superior officers [if necessary by making suitable amendment in Law Officers' Rules] to keep the Police witness and other Government departmental witnesses present before the Court with due co-ordination and assistance of their concerned head of departments for the purposes of examination, so that to that extent the fate of prosecution case can be saved in the public interest. Not only that but in cases whenever it is found that the learned P.P. has not taken desired care in keeping the Police and/or other public servant witnesses present before the Court for examination, and thereby failed to discharge his duty, then in that case, explanation must be called for from the concerned erring learned P.P., and in case, the said explanation is not found to be satisfactory, he may as well be sacked, depending upon the gravity and seriousness of the case and other attending circumstances.

4. In the result, this appeal is allowed. The impugned judgment and order passed by the trial Court is hereby quashed and set aside. The fine, if paid, is ordered to be refunded. The matter is remanded to the trial Court to be disposed of on merits according to law. The Office is directed to forward a copy of this judgment to the Secretary, [i] Home Department, [ii] Legal Department, and [iii] General Administration Department for consideration and appropriate action.