

(2017) 03 GUJ CK 0064
In the Gujarat High Court
Case No : 78 of 2008

STATE OF GUJARAT

APPELLANT

Vs

NILESHKUMAR RUPAJI BARANDA

RESPONDENT

Date of Decision : 15-03-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 397](#), [Section 401](#), [Section 227](#) - Calling for records to exercise powers of revision - High Courts powers of revision - Discharge
[Bombay Provincial Municipal Corporations Act, 1949](#), [Section 458](#) - By-laws for what purpose to be made.

Citation : (2017) 03 GUJ CK 0064

Hon'ble Judges : Z.K.Saiyed

Bench : Single Bench

Advocate : NJ SHAH, SV RAJU, BHADRISH S RAJU

Final Decision : Dismissed

Judgement

1. The present set of revisions by the applicant State under Section 397 read with Section 401 of Code of Criminal Procedure, 1973 challenges the respective orders passed by the learned Additional City Sessions Judge, Ahmedabad, against discharge of the respondents, who were serving with the Ahmedabad Municipal Corporation.

2. The facts in short are that in the aftermath of a devastating earthquake occurred in the morning of 26.1.2001 in the entire State of Gujarat, many number of buildings were collapsed causing death and injuries to several persons. It was alleged that due to poor quality of material used in the construction, many buildings were collapsed and several persons were either died or sustained injuries and hence, several complaints were lodged with various Police Stations inter alia alleging that the builders in collusion with other accused persons acted against the bye-laws and rule of Ahmedabad Municipal Corporation. These complaints were registered under various Sections of IPC,

Gujarat Ownership of Flat Act as well as under the provisions of B.P.M.C. Bye-laws and ISI Code and police started investigation. At the end of investigation, as there appeared prima facie case against the accused, charge sheet was submitted against each of the accused in the Court.

3. The respondents-accused filed applications under Section 227 of the Code before the learned City Sessions Court, Bhadra at Ahmedabad for discharging them from the offences levelled. Said applications were allowed by the learned

Additional Sessions Judge, City Sessions Court, Ahmedabad, which is giving rise to the respective revisions by the State.

4. Heard learned APP Mr. N.J. Shah for the applicant - State and learned senior counsel Mr. S.V. Raju in all the revisions.

5. Learned APP Mr. N.J. Shah for the applicant-State in each revision has submitted that the respondents are jointly and severally liable for the collapse of the buildings as it was their duty being employees of the Corporation to visit the respective sites and see whether the constructions were being carried out in accordance with the law or not. However, the respondents in collusion with the builders and supervisors allowed to carry out the construction not in accordance with the bye-laws of the Corporation and thereby they committed the alleged offences. It is also submitted that Building Use Permissions were not granted to the buildings of the collapsed building by the Corporation. As per the bye-laws, structural designers, architects and the respondents are also liable. At this stage, this Court cannot appreciate the evidence of statements of witnesses recorded by the investigating agency. The reason for collapse of the buildings can be ascertained only upon leading evidence and if the trial court upon conclusion of trial comes to the conclusion that they were not responsible as per the bye-laws, they may even be acquitted. However, the Court cannot scrutinize the evidence and is not required to see the probable defense of the accused or the chances of conviction at this stage. What is required to be seen at this stage is the prima facie case and if the Court on going through the papers is satisfied that prima facie case is made out against the accused, charge can be framed against the accused. Here in the present set of cases, on going through the papers, it does

appear that there is prima facie involvement of the respondents to frame charge and hence, it is urged that the impugned order of discharge may be quashed and set aside by allowing the revisions.

6. Learned senior counsel Mr. S.V.Raju for the respective respondents-accused have mainly submitted that the respondents were serving as Ward Inspector and Structural Engineer with the Ahmedabad Municipal Corporation at the relevant time. It is submitted that as they had only inwarded the respective plans of the collapsed buildings, they were involved falsely in the offence. It is further submitted that a large number of buildings where Building Use Permission has been granted were collapsed and hence, grant of non-grant of

Building Use Permission is of no consequence. According to them, the Corporation is also not bound to test the soil, check the structural design, etc. They are also not liable with regard to the title of the land or building, easement rights, variation in the area from recorded area of a plot or building, structural reports and structural drawings, workmanship and the soundness of materials in construction. It is therefore submitted that the respondents are not liable with regard to the construction, erection or soundness of the materials used in the construction. They are not required to remain at the site till the constructions are over and it is the Supervisor, who has to certify as to whether the materials used in the construction are of the standard quality or not. Hence, if the builder plays any mischief with the construction, it may not be known to the officers of the Corporation. It is therefore submitted that when inspection would be done on the buildings when complete, they may not be knowing about the exact number of pillars

constructed as many pillars might be concealed under the wall and the employees of the Corporation will have to go by the opinion given by the Site Engineer and, therefore, the inspection report prepared by the Inspector would not contain exact number of pillars and whether the construction is as per the structural design.

7. It is further submitted that owners/builders did not file the reports in the form of progress certificates with the Corporation as required by the bye-laws and did not give the completion certificates as per the approved plan. It is also submitted that Building Use Permissions were not obtained by the owners/buildings of the collapsed building. It is further submitted that owners/builders of the collapsed buildings constructed, completed and used the structure on their own and it might be due to construction of additional rooms and change of use causing additional load on the structure that would have resulted in consequent collapse of buildings during earthquake. It is further submitted that various agencies and contractors appointed by the builders were involved in the construction of the buildings who would visit the sites and supervise the work of the concerned builders. It is further submitted that the respondents were neither builders, supervisors, structural designers or Clerks of works. It is submitted that the earthquake being a natural catastrophe, no rashness and negligence can be attributed to the respondents. It was not the case of the prosecution that the buildings were collapsed due to mistake of the respondents. The case was that due to poor and low quality of material used in the building, the buildings were collapsed. However, they were not in any way responsible for the same because they have no

connection with the construction activities of the buildings. Looking to the entire papers of charge sheet, since no prima facie involvement of the respondents is disclosed, they were discharged by the court below. It is also further submitted that they were not in any way connected with any of the allegations levelled in the charge sheet. It is therefore urged that these revisions be dismissed.

8. This Court has gone through the relevant records as well as the impugned orders of discharge. This Court has also gone through the relevant bye-laws concerning the duties and responsibilities of the respondents-accused. I am aware that in revision the Court is not bound to give detailed reasons.

9. It is true that due to devastating earthquake took place in

the entire State of Gujarat in the morning of 26th January, 2001, several buildings were collapsed causing death of several persons and injuries to many others. In pursuance thereto, various complaints were registered with various Police Stations of the State of Gujarat levelling allegations of negligence against the builders and other persons. Thereafter, investigation was started and at the end of investigation, present respondents as employees of the Corporation and various other persons including builders were charge sheeted. Since the present respondents felt that they are not liable for any negligence in the collapse of the collapsed buildings, they preferred applications for discharge which were granted by the court below and they were discharged from the offences levelled which gave rise to the present revisions.

10. This Court at present is required to see whether the

present respondents being employees of the Corporation as employees are responsible in any way for the negligence caused in the collapse of the buildings or not.

11. It appears from Bye-law No.II(8) of the Building Bye-laws of the Corporation framed under Section 458 of the B.P.M.C. Act, 1949 that it shall be incumbent upon every person whose plans have been approved to submit amended plans for any deviations proposed to be made during the course of construction of building work.

12. As per bye-law No.II(10), approval of drawings and acceptances of any statements, documents, structural report, structural drawings, progress-certificate or building completion certificate shall not discharge the owner, surveyor, engineer, architect, clerk of works and the structural engineer from their responsibilities imposed under the Act and the bye-laws.

13. Bye-law No.II(16) stipulates about the responsibilities of the persons acting as Licensed Surveyor, Licensed Engineer, Licensed Architect, Licensed Designer and Licensed Clerk of Works, which are as under:

(i) It shall be the duty of the person who prepares plan and sections to see that the existing positions on site is correctly represented on the plan. He shall also comply with the other requirements prescribed under the rules and bye-laws and prepare plans and sections in compliance of the bye-laws.

(ii) It shall be the duty of the structural designer:

1. To prepare a report of the structural design according to prescribed format for submission to the Municipal Commissioner for the purpose of obtaining building

permit. 2. To prepare detailed structural design on the basis of the National building Code or relevant Indian Standard

Specifications.

3. To prepare detailed structural drawings and specifications for execution indicating thereon, design live load, safe soil bearing capacity, specifications of materials, assumptions made in design, special precautions to be taken by the contractor to suit the design assumptions etc. whatever applicable.

4. To supply two copies of structural drawing to the supervisor.

(iii) It shall be the duty of the supervisor who is engaged under these bye-laws:-

1. To adhere strictly to the structural drawings, specification and written instructions of the structural designer.

2. To follow the provisions of the National building Code or Indian Standard Specifications as regards materials, components, quality control and the process of construction.

3. To see that adequate provisions is made for ensuring the safety of workers and other during excavation, construction and erection.

4. To see that adequate provision is made for providing safe and adequate temporary structure required for construction and erection.

5. To bring to the notice of the structural designer any situation or circumstances which in his opinion is liable to endanger safety of workers or others.

6. To deposit with the Municipal Commissioner one set of structural drawings of the work executed along with the progress certificate before proceeding to the next stage of the work.

No supervisor shall supervise more than ten sites on any working day. When a clerk of works is appointed by the owner, in addition to his own appointment as a supervisor, his responsibility in connection with the specification and workmanship shall cease. It shall be the duty of the Clerk of Works to see that the standards of specifications and the workmanship as prescribed in the National building Code are maintained during all the stages of the erection or execution of the work approved under the plans. The Clerk of works shall be full-time on the project and shall not take employment or appointment on any other site.

14. Bye-Law No.III(9) stipulates about safety of buildings. It

specifies that every person who undertakes the construction work on a building or directs or supervises such works shall be responsible and shall ensure use of sound and good quality building materials properly put together for optimum safety. He shall be liable for all consequences arising out of breach of this bye-

law. It also specifies that every person who undertakes construction of a building and/or who supervises the said construction and/or who designs the structural member of the building shall comply with the provisions of the National Building Code prevailing at the relevant time or the provisions of the Indian Standard Specifications published from time to time.

15. It appears from the bye-laws reproduced above that the respondents-accused as employees of the Corporation are not directly responsible for day-to-day construction activities of the buildings. They are also not concerned with sanctioning of the plan, design or to see whether inferior quality of material is used in the construction of the building or not. It also appears that as and when an application for occupation permission is made accompanied by a declaration of the owner that the work on the building is completed as per the approved plan and as per bye-law of the Corporation under the supervision of the Supervisor, the Supervisor shall issue a certificate to the effect that the construction was carried out under his supervision as per the designed plan and is complete in all respects. He shall also certify that the materials used in construction are according to the specified standards and the buildings are safe for occupation. Thus, it is clear that it is the Supervisor or Clerk of Works who would be mainly responsible for any

negligence in the construction activities of the buildings and the respondents-accused being Ward Inspectors and Structural Engineer cannot be held liable for any negligence in regard to the same. Thus, they cannot be fastened with the liability of collapse of the building being employees of the Corporation and hence, case of the present respondents are entirely different from that of the Supervisors or Clerk of works.

16. This Court has also perused the decisions of this Court in Criminal Revision Application No.422 of 2006, Criminal Revision Application No.397 of 2006 and allied matters, Criminal Revision Application No.396 of 2006 and allied matters, Criminal Revision Application Nos.705 of 2006 and allied matters, Criminal Revision Application Nos.395 of 2006 and allied matters and Criminal Revision Application Nos.418 of 2006 and allied matters, wherein this Court has adopted view to allow discharge to the accused involved in such type of offence.

17. From the entire papers of charge sheet and the documents annexed thereto, there is nothing to implicate that the respondents are liable or responsible for any of the offences levelled against them. No grave suspicion is made out against the respondents for framing of charge either. In view of the above, taking into consideration nature of their duties, this Court is of the prima facie opinion that there is no sufficient grounds to proceed with the trial against the respondents and hence, they were rightly discharged by the learned Additional City Sessions Judge. Since no irregularity or illegality as having committed in arriving at the said findings has been noticed by this Court, these

revisions are required to be dismissed.

18. All these Criminal Revision Applications are dismissed. Rule is discharged in each revision.

19. Office shall place a copy of this judgment in each revision.