
(1964) 08 GUJ CK 0015
In the Gujarat High Court
Case No : Criminal Ref. No. 47 of 1965

State of Gujarat	Vs	APPELLANT
Soni Champaklal Somabhai		RESPONDENT

Date of Decision : 17-08-1964

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 161, 161(3), 173(4), 251A(7)

Citation : AIR 1965 Guj 246 : (1965) CriLJ 497 : (1964) GLR 981

Hon'ble Judges : V.B. Raju, J

Bench : Single Bench

Advocate : A.D. Desai, Asst. Govt. Pleader, for the Appellant;

Judgement

(1) learned Sessions Judge, Broach, recommends that the order of the learned Judicial Magistrate, First Class, Jambusar, refusing to allow the

prosecution to examine its witness one Mr. Goehel, P.S.I, be set aside. The learned Magistrate refused permission to the prosecution to examine

the witness on the ground that the statement was not supplied to the accused as required by section 173 of the Cr.P.Code.

(2) If we turn to section 251-A of the Cr. P.Code, it is clear that the Magistrate is bound to take all such evidence as may be produced in support

of the prosecution. At the same time, we must remember the provision of sub-s. (4) section 171 of the Cr. P.Code. Under that sub-section the

police are bound to give copies of all statement recorded under the sub-section (3) of section 161 of the Cr. P.Code of all persons whom the

prosecution must as its witnesses. Ordinarily, the prosecution must record the statements of all witnesses whom it proposes to examine as its

witnesses. In this case, however, no statement of Mr. Gohel under S. 161 of the Cr. P.Code has been recorded. The failure to comply with the

provisions of sub-section (4) of section 173 of the Cr. P.Code cannot affect the provisions of sub-section (7) of S. 251-a of the hearing, the

Magistrate shall proceed in support of the prosecution. The provisions in section 173 of the Cr. P.Code, requiring the police to give copies of

statements to the accused has been simplified. The failure to comply with the provisions of sub-section (4) of S.173 of the Cr. P. Code may affect

the value of evidence. But, it cannot affect the mandatory character of sub-section (7) of section 215-a, which provides as under:

On the date so fixed, the Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution"".

(3) The order of the learned Magistrate is, therefore, set aside and he is directed to allow the prosecution to examine Mr. Gohel as a witness. It is

open to the Magistrate to attach any value he thinks proper to the evidence of Mr.Gohel.

(4) AI/ AGJ/ V.B.B.

(5) Reference accepted.

