

(1977) 10 GUJ CK 0004
In the Gujarat High Court

State of Gujarat

APPELLANT

Vs

Vijay Baburao Takle

RESPONDENT

Date of Decision : 13-10-1977

Acts Referred:

Bombay State Reserve Police Force Act, 1951 — Section 14(g)(ii), 14(g)(ii)

Citation : (1978) 19 GLR 289

Hon'ble Judges : M.P. Thakkar, J;A.N. Surti, J

Bench : Division Bench

Judgement

M.P. Thakkar, J.—A prosecution which ought never to have been launched was instituted against respondent V.B. Takle, at the material time holding the office of Police Constable in Company "D" of Group 1 of State Reserve Police Force (S.R.P.F.). who was sent on deputation to Kerala in about November 1972 and who was obliged to return to his home town at Baroda on account of the sickness of his father in order to tend to him. A very petty matter was blown out of all proportion and the respondent was prosecuted for having deserted his post of duty whilst on "active duty" and thus having committed an offence u/s 14 (g)(ii) of the Bombay Reserve Police Force Act, 1951 (Act). The learned Additional Sessions Judge, Baroda, who tried the respondent in Sessions Case No. 172/74 acquitted him by his order dated January 27, 1975 on two grounds, namely, (1) lack of territorial jurisdiction and (2) even assuming that there was jurisdiction, the prosecution had failed to establish that the respondent was on "active duty" and that he had deserted his post. The State has preferred the present appeal in order to question the validity of the aforesaid order of acquittal rendered by the learned trial Judge.

2. The learned Public Prosecutor has urged the following submissions in support of this appeal:

(1) The learned trial Judge was in error in holding that the Baroda Court had no territorial jurisdiction in regard to the matter.

(2) The trial Court was in error in holding that the respondent was not on "active duty" and had not deserted his post within the meaning of the relevant provision of the Act.

3. So far as the first point is concerned, the State must succeed forthwith for there is no escape from the conclusion that the learned trial Judge had jurisdiction to try the appellant at Baroda in connection with the alleged offence. It appears that the attention of the learned trial Judge was not called to Section 10 of the Act which inter alia provides that every reserve police officer shall for the purpose of the said Act be deemed to be always on duty in the State. That the respondent is a reserve police officer as defined in Section 2 (h) of the Act is incapable of being disputed and has not been disputed. Under the circumstances, by virtue of the deeming clause embodied in Section 10 it can be said that the respondent was on duty within the State of Gujarat at all material times. The view taken by the learned trial Judge is that inasmuch as it was the prosecution case that the respondent had deserted his post of duty within he was posted at Allepey in Kerala State, it cannot be said that the offence of desertion from active duty within the meaning of the relevant provision was committed within the territories of the State of Gujarat. If the attention of the learned trial Judge had been called to the aforesaid deeming provision, he would have immediately realised that by virtue of the said deeming provision, the respondent could be said to be on duty within the State of Gujarat at the material time when he was supposed to have committed the offence though physically he was in Kerala. If the said provision is read with Section 182 of the Code of Criminal Procedure, 1898 (the new Code does not apply to the previous proceedings instituted before it came into force) inasmuch as there is uncertainty in which local area the offence was committed, the offence could be tried by any Court within the territories of Gujarat including the Baroda Court. It may be stated that the Learned Counsel for the respondent fairly conceded that the decision of the trial Court on this point was altogether unsustainable in view of the aforesaid provisions. The decision of the learned trial Judge on this point must, therefore, be reversed and it must be held that the Baroda Court had jurisdiction.

4. And now we reach the heart of the problem. The learned trial Judge has taken the view that in order to bring home an offence u/s 14(g)(ii) it must be established by the prosecution (1) that the accused was on active duty and (2) that he had deserted his force or his post. Now, Section 14 (g)(ii) under which the respondent has been charged reads thus:

14. Every reserve police officer who.--

"XX XX XX XX XX (g) while on active duty.

"XX XX XX XX XX (ii) deserts his force or his post; or

The expression "active duty" has been defined by Section 2 (a)(i) which is in the following terms:

2. In this Act, unless there is anything repugnant in the subject or context, (a) "active duty" means-

(i) the duty to prevent or investigate offences involving a breach of peace or danger to life or property and to search for and apprehend persons concerned in such offences or who are so desperate and dangerous as to render their being at large hazardous to the community.

The learned Public Prosecutor contended that the learned trial Judge was in error in taking the view that the respondent was not proved to be on "active duty" and also in taking the view that the prosecution had failed to establish that there was desertion on his part. However, when the learned Public Prosecutor was asked to point out from the evidence as to what particular duties were assigned to the appellant at the material time, the learned Public Prosecutor was obliged to confess that there was no evidence on the point whatsoever. In order to establish the first ingredient of the offence, namely, that the offender was on "active duty" within the meaning of Section 2 (a)(i) of the Act, there must be positive evidence on the record to show what exact work or task was entrusted to the accused person. Section 10 of the Act provides that a reserve police officer shall be deemed to be always on duty. It is, however, not sufficient to show that the officer concerned was on "duty." It must be shown that he was on "active duty". The expression "active duty" is an expression of art and it is incumbent on the prosecution to establish that he was on that type of duty which would fulfil the description of "active duty" within the meaning of Section 2 (a)(i). All that the prosecution has established is that at the relevant point of time the respondent was on "duty" and "not" that he was on "active duty". According to the learned Public Prosecutor the prosecution relied on the provision contained in Section 2 (a)(i) which provides that the officer concerned would be considered to be on active duty if he has been assigned the duty to prevent or investigate offences involving a breach of peace or danger to life or property and to search for and apprehend persons concerned in such offences etc. But in order to show that he was on such type of duty there must be evidence. And evidence there is none. The prosecution has examined P.W. 1 P.S.I. Gupta who has produced the copies of notices addressed to the respondent. He was at the material time at Baroda and he had no personal knowledge as to what duties were assigned to the respondent and P.W. 1 has not uttered one single word on the subject. It is not even formally stated that the respondent was assigned any particular duty at Allepey. His evidence is, therefore, of little avail to the prosecution. The next witness to be examined is P.W. 2. Police Inspector, S.R.P.F. Group No. I Company D. He has referred to the fact that the respondent had submitted an application for earned leave. He has also referred to the correspondence exchanged between him and Mr. Sonavana who was at the material time holding the office of Group Commandant. Strangely enough even he has not uttered a single word in regard to the duties assigned to the respondent. It is evident that the prosecution was altogether oblivious of the need to establish that the accused was assigned a particular duty which would fall within the description of "active duty" as defined

by the dictionary contained in the Act. Be that as it may, there is no evidence whatsoever, and it is futile to contend and specious to argue, that the prosecution has successfully established that the respondent was on "active duty" at the material time. If he was not on active duty, there is no question of deserting the post and of having committed an offence u/s 14 (g)(ii). We may incidentally observe that in the view we are taking, it is not necessary to examine the other dominion of the matter as to whether there was "desertion" on the part of the respondent. We do not propose to rest our decision on that part of the defence for it is not necessary to do so. The respondent is entitled to have the order of acquittal confirmed as soon as it is shown that the prosecution has miserably failed to show that he was on "active duty." But for the purposes of the record we consider it our duty to incidentally remark that there was no question of the respondent having intentionally abandoned his post of duty. It appears that his father at Baroda was sick and the respondent had proceeded to Baroda in anticipation of his request being granted after giving application Ex. 18 for earned leave for 30 days to the Group Commandant. There was no question of his running away from his duty or running away from the risk attendant to his post as a police officer. It is not as if he was on active duty wherein a risk to his life or limb existed and in order to save himself he had fled from the post of duty which could be construed as a deliberate desertion on his part. The poor man felt that when his old and aged father was ailing, it was his duty to go and attend to him. All that he was doing was that he was not running away from his duty to his parents. There was no question of his running from the duty enjoined by his office. If it had been shown that the respondent had been entrusted with any work or task which involved some danger to him and he had left the post of duty under some pretext it would have been a different matter. We need not, however, enter upon a theoretical discussion as to the content of the expression "desertion" in the backdrop of the provisions of this particular Act. Suffice it to mention that the Learned Counsel for the respondent has invested considerable research and called our attention to *Moore v. Canadian Pacific Steamship Co.* 1945 All ELR 128 decided by *Lynskey, J.* on November 8, 1944, and *Ibrahim and Others Vs. State of West Bengal and Another*, . If it was necessary to do so, we would have examined the legal aspect arising in the context of the defence urged from this standpoint in greater depth, but having regard to the view taken by us on the first point, we do not consider it necessary to do so.

In the result, the appeal fails and is dismissed on merits though we hold that the trial Court had jurisdiction.