
(1988) 09 GUJ CK 0014
In the Gujarat High Court

Suleman Husa Devji

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 02-09-1988

Acts Referred:

Penal Code, 1860 (IPC) — Section 143, 143, 147, 147, 148

Citation : (1989) 1 GLR 101

Hon'ble Judges : P.R. Gokulakrishnan, C.J.;R.J. Shah, J

Bench : Division Bench

Judgement

P.R. Gokulakrishnan, C.J.—This Special Criminal Application is to quash and set aside the externment order and also the order passed by the appellate authority, confirming the externment order.

The petitioner herein was externed for a period of two years from Surat-Rural, Bharuch and Valsad districts. The said order has been confirmed by the Government in its Home Department. Against these orders, the present x petition has been filed.

2. The show cause notice is dated 30-11-1987. In this show cause notice, w various charges were levelled against the petitioner herein and it also mentions that the petitioner was involved in the offences of force and violence punishment under Chapters 16 and 17 of the I.P.C. and that he was arrested in all cases and that those cases are still pending trial. For the purpose of disposal of this petition, it is unnecessary for us to give the details of the charges, except the chart given in the show cause notice regarding the cases. that were pending trial. In the chart, SI. No. 2 deals with Crime Register No. 58 of 1986 on the file of Rander Police Station, involving offences under Sections 143, 147, 148, 149, 341 and 427 of the I.P.C. The said offences, according to the prosecution, was committed on 2-5-1986 near Rander Hariya Road Dargah. It is further stated that the said case is pending trial. The petitioner in his petition has specifically stated that this case, which has been registered at Rander Police Station at Crime Register No. 58 of 1986 was tried by the Judicial Magistrate, First Class

and the same has been disposed of on 30-11-1986 by acquitting the petitioner herein. It is further stated in the petition that the externing authority i.e. respondent No. 2 herein, has relied upon the wrong information and hence there is non-application of mind on the part of the externing authority in issuing the show cause notice and subsequently passing externment order. In respect of this averment. The Deputy Commissioner of Police, Surat City, Mr. H.R. Gahlot in his affidavit-in-reply has stated that the sponsoring authority has mentioned that the Crime Register No. 58 of 1986 was pending trial and hence the externing authority relying upon the same issued the notice and subsequently issued the externment order. It is further stated in the affidavit-in-reply that though the case registered at Crime Register No. 58 of 1986 was shown to be pending and though the petitioner was acquitted in the said case, that does not vitiate the order of externment inasmuch as the conditions precedent before the exercise of powers are present in the facts of the case. Reading the affidavit-in-reply, it is clear that inspite of acquittal in Crime Register No. 58 of 1986, the notice and the externment order clearly states that the said case registered at Crime Register No. 58 of 1986 against the petitioner is pending trial.

3. Thus the fact remains that the externing authority has failed to take into consideration the favourable circumstance to the credit of the petitioner herein, but on the other hand mentioned that the case registered against the petitioner in the said crime register was pending trial. The fact of acquittal clearly reveals that the witnesses were present and after proper appraisal of the evidence, the Court has acquitted the petitioner herein. If this circumstance had been taken into consideration we do not know whether the externing authority would have stated that witnesses are not coming forward to give evidence openly. Such type of mentioning certain instances, when especially the freedom of a person is involved, has been deprecated both by this Court and the Supreme Court in many a time. In *Jafarbai Ibrahim Memon v. Dy. Commissioner of Police, Surat and Anr.* 1986 GLH 4 , a Bench of this Court has specifically stated that authorities concerned should not mechanically pass the externment order, when especially the liberty of the individual is involved. When the liberty of an individual is involved, it is the duty of the externing authority to apply its mind properly and carefully before any such externment order is passed. Mr. B.D. Desai no doubt cited the decision reported in *Dayabhai Premabhai Vs. Commissioner of Police and Others*, and stated that one instance wrongly stated will not vitiate the externment proceedings. We are afraid, we are not able to appreciate this contention since the said decision nowhere states that a single wrong statement of an instance favourable against the externee will not vitiate the proceedings. On the other hand, the principle enunciated in *Jafarbai's* case 1986 GLH 4 is strictly followed in this Bench decision also.

4. From the foregoing discussion, it is clear that the externing authority has not applied its mind to a very relevant circumstance, which would have shown that witnesses are forthcoming for the purposes of giving evidence against the petitioner. On the other hand, the externing authority has mechanically applied

its mind and has wrongly stated that the case registered at Crime Register No. 58 of 1986 is pending trial. The fact clearly reveals that the said Crime Register No. 58 of 1986 was tried by the Court and the petitioner has been acquitted in that case.

5. This is a clear case of non-application of mind by the externing authority and it also spells out the mechanical way in which the externing authority has passed the order of externment. This single instance itself is sufficient to quash the order of externment. In view of this glaring mistake committed by the externing authority, it is not necessary for us to go into the other contentions such as failure of natural justice, mala fides and denial of opportunity to hear the witnesses.

For all these reasons, the order of externment is quashed. Rule is made absolute accordingly.