

(1966) 07 GUJ CK 0007

In the Gujarat High Court

Case No : Special Criminal Application No. 83 of 1966

Vrajlal Tarachand

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 28-07-1966

Acts Referred:

Constitution of India, 1950 — Article 227

Criminal Procedure Code, 1898 (CrPC) — Section 118, 122, 133, 143, 144

Citation : AIR 1967 Guj 225 : (1967) CriLJ 1325 : (1966) 7 GLR 1085

Hon'ble Judges : A.R. Bakshi, J

Bench : Single Bench

Advocate : D.D. Vyas, for the Appellant; G.T. Nanavati, Asst. Govt. Pleader and R.C. Mankad, for the Respondent

Judgement

(1) The applicant in this revision application is the Manager of a concern known as Junagadh Iron Industry. An application was made to the Sub-Divisional Magistrate, Junagadh Division u/s 133 of the Code of Criminal Procedure for closing the above factory of the applicant was causing nuisance. The Sub-Divisional Magistrate, Junagadh passed an order on 19th January 1966 that the applicant should stop the use of electrically operated hammers that were worked in the factory. Against this order, the applicant preferred a revision application to the District Magistrate, Junagadh who rejected the revision application on the ground that no revision application could be preferred u/s 438-A Criminal Procedure Code in respect of an order passed u/s 133 of that Code. This order was passed by the District Magistrate on 8th March 1966. The applicant has preferred the present revision application against the aforesaid order of the district Magistrate. The applicant has also prayed for setting aside the order passed by the Sub-Divisional Magistrate.

(2) Mr. D.D. Vyas appearing on behalf of the applicant contended that the order passed by the District Magistrate that a revision application was not competent against an order passed by the Sub-Divisional Magistrate u/s 133 Criminal

Procedure Code was erroneous because under the relevant provisions of the Code of Criminal Procedure , the District Magistrate would be the competent authority to revise such orders passed by the Sub-Divisional Magistrate. Mr. Vyas, therefore, urged that the order of the District Magistrate holding that the revision application was incompetent, must be set aside. The learned Assistant Government Pleader raised an objection that no revision of application was competent to the High Court against an order passed by the Sub-Divisional Magistrate or by the District Magistrate and that therefore, the present revision application was incompetent. It was urged by the learned Assistant Government Pleader that section 435 of the Code of Criminal Procedure does not give any powers of revision to the High Court because the Sub Divisional Magistrate was not an inferior Criminal Court within the meaning of the Sub Section (1) of Section 435 and that therefore, the High Court has no power to act under that sub-section. Mr. R.C. Mankad appearing on behalf of some of the opponents supported the learned Assistant Government Pleader. It would, therefore, be necessary to examine the question whether a revision application would lie to the High Court in respect of an order passed by the Sub Divisional Magistrate was not an inferior Criminal Court, then sub-section (1) of Section 435 would have no application and it would not be competent to the High Court to act under that sub-section. Similarly also, the High Court could not revise the order of the District Magistrate in respect of a matter arising u/s 133, Criminal Procedure Code. In order to decide this question, it would be necessary to refer to some of the relevant provisions of the Criminal Procedure Code. Sub-section (1) of Section 435 reads as under:-

"(1) The High Court or any Sessions Judge other than the Sessions Judge of the Court of Sessions for Greater Bombay, may call for and examine the record of any proceeding before any inferior Criminal Court situate within the local limits of its or his jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and so as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended and, if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record."

It will be noticeable that the words "or District Magistrate, or any Sub-Divisional Magistrate empowered by the State Government in this behalf" occurring after the words "The High Court or any Sessions Judge" were deleted by Bombay Act 23 of 1951, with the effect that the District Magistrate and the Sub-Divisional Magistrate empowered by the State Government could not act under sub-section (1) of Section 435. It further appears that the explanation occurring under the old section which was in the following words:-

"Explanation - All Magistrates whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purpose of this sub-section and of Section 437"

was dropped. Sub-section (2) of Section 435 relates to the power of the District Magistrate or a Sub-Divisional magistrate empowered by the State Government in that behalf to receive the order of any subordinate Executive Magistrate and is in the following words:-

"(2). The District Magistrate or any Sub Divisional Magistrate empowered by the State Government in this behalf, may call for and examine the record of any proceedings before any Subordinate Executive Magistrate for the purpose of satisfying himself as to the correctness, legality or propriety of any order recorded or passed and as to the regularity of any proceedings of such Subordinate Magistrate and may when calling for such record, direct that the execution of any order be suspended and if the person is in confinement that he be released on bail on his own bond pending the examination of the record."

Sub-section (2) of Section 435 thus makes a distinct provision for the revision of orders passed by Executive Magistrates who are subordinate to the District Magistrate or the Sub Divisional Magistrate specially empowered. Sub-section (4) of Section 435 was substituted for the original by Bombay Act 39 of 1955 and that sub-section after the aforesaid substitution runs as under:-

"The High Court may call for and examine the record of any proceeding in respect of an order made under Sections 118, 122, 143, 144 or 145, notwithstanding the fact that such proceeding was before an Executive Magistrate or the Commissioner of Police as the case may be."

It will appear from sub-section (4) quoted above that the power given to the High Court to revise the orders in respect of an order passed by an Executive Magistrate has been restricted to orders passed under Sections 118, 122, 143, 144 or 145 of the Criminal Procedure Code. These are the relevant provisions of the Criminal Procedure Code to which reference has been made by Mr. Vyas and the learned Assistant Government pleader.

(3) Part II of the Code of Criminal Procedure refers to the constitution and powers of Criminal Courts and Offices. Chapter II relates to the constitution of Criminal Courts and Offices, Section 6 in that Chapter provides that -

"Besides the High Court and the Courts constituted under any law other than this Code for the time being in force there shall be two classes of Criminal Courts in the State of Bombay namely:-

I. Courts of Session.

II. Courts of Magistrates."

By Bombay Act 23 of 1951, Section 6-A was introduced in this chapter and that section relates to Classes of Magistrates and is as under:-

"There shall be the following classes of Magistrates, namely:

I. Judicial Magistrates.

- (1). Presidency Magistrates
- (2). Magistrates of the first class.
- (3). Magistrates of the second class.
- (4). Magistrates of the third class.
- (5). Special Judicial Magistrates.

II. Executive Magistrates.

- (1). District Magistrates.
- (2). Sub Divisional Magistrates.
- (3) Taluka Magistrates.
- (4). Presidency Magistrates specially empowered by the State Government.
- (5). Special Executive Magistrates."

Section 13 of the Code of Criminal Procedure relates to appointment of Sub-Divisional Magistrates and Taluka Magistrates and their jurisdiction and S. 17 provides that all Judicial magistrates appointed under sections 12 and 14 and all Benches constituted under S. 15 shall be subordinate to the Sessions Judge. Section 17A relates to subordination of Executive Magistrates and provides that all Executive Magistrates appointed under S. 13 or S. 14 shall be subordinate to the District Magistrate; and every Taluka Magistrate shall also be subordinate to the Sub Divisional Magistrate, subject however to the general control of the District Magistrate. Section 17B provides that Courts of Session and Courts of Magistrates including Courts of Presidency Magistrates shall be Criminal Courts inferior to the High Court and Courts of Magistrates outside Greater Bombay shall be Criminal Courts inferior to the Court of Session. Section 6 of the Code of Criminal Procedure makes it clear that there are two classes of Criminal Courts viz. Courts of Session and Courts of Magistrates and S. 6A does not refer to Courts but to classes of Magistrates. Therefore, by the mere fact that an Executive Magistrate is mentioned in S. 6A, it cannot be said that he would be an inferior Criminal Court as contemplated by S. 435(1). Section 17 of the Code clearly refers to Judicial Magistrates and states that they shall be subordinate to the Sessions Judge who may from time to time, make rules or give special orders consistent with the Code as to the distribution of business among such Magistrates. That section does not include Executive Magistrates within its purview, but for that Section 17A has been introduced which provides that all Executive Magistrates shall be subordinate to the District Magistrate and every Taluka Magistrate shall also be subordinate to the Sub Divisional Magistrate, subject however, to the general control of the District Magistrate who may from time to time, make rules or give special orders consistent with the Code as to the distribution of business among the Magistrates subordinate to him. The code thus makes a clear distinction between Judicial Magistrates and Executive Magistrates

as regards the question of subordination. We may now further examine the provisions of Section 435 of the Code of Criminal Procedure. Prior to the amendment made by Bombay Act 23 of 1951, sub-section (1) of Section 435 included the expression "District Magistrate" also, but the amendment, the expression has been removed and sub-section (2) has been added. Sub-section (1) of Section 435 thus clearly includes and deals with cases which arise from inferior Criminal Courts and in respect of which revisional power has been given to the High Court or to the Court of Sessions; whereas sub-section (2) of that section deals with revisional powers of the District Magistrate or any Sub Divisional Magistrate empowered by the State Government in respect of proceedings before any subordinate executive Magistrate. Thus Executive Magistrates have been treated separately and are not included in sub-section (1) of Section 435. They are thus not treated as Criminal Courts so as to attract jurisdiction under sub-section (1) of Section 435, but the revisional jurisdiction is vested in the District Magistrate by virtue of sub-section (2) of Section 435. In this context, we might also examine the provisions of sub-section (4) of Section 435 which provides that the High Court may call for and examine the record of any proceeding in respect of an order made under Sections 118, 122, 143, 144 or 145, notwithstanding the fact that such proceeding was before an Executive Magistrate or the Commissioner of police as the case may be. This sub-section was added in 1955 and authorized the High Court to call for the record and examine the correctness or propriety of orders passed under Sections 118, 122, 143, 144 or 145 of the Code of Criminal Procedure. It would thus appear that the Legislature thought it necessary to add sub-section (4) to Section 435 and that would support the inference that sub-section (1) of Section 435 without sub-section (4) would not have empowered the High Court to exercise revisional jurisdiction in respect of the sections mentioned in that sub-section. It would thus clearly appear that the High Court would have no powers of revision in respect of the orders passed by the Sub Divisional Magistrate but the proper authority having the power to revise such orders would be the District Magistrate. The same view has been taken in the case of *Ramchandra Nagoji Kandam Vs. State of Maharashtra*, . In that case, the matter came to the High Court out of the proceedings started u/s 145 of the Criminal Procedure Code. The Sub-Divisional Magistrate passed an order under that section against which a revision application was preferred to the Sessions Judge who held that he had no jurisdiction to entertain the revision application and it was urged before the High Court that the view taken by the Sessions Judge was not correct. The point that was canvassed before the High Court in that case was whether the Sub Divisional Magistrate, acting u/s 145, Criminal Procedure Code could be said to be an inferior Criminal Court as mentioned in sub-section (1) of Section 435, Criminal Procedure Code and that question was answered in the negative.

(4) The High Court therefore has not the power of revision in respect of the order passed by the Sub Divisional Magistrate and the contention of Mr. Vyas that the High Court should interfere with the order passed by the Sub Divisional

Magistrate cannot be accepted. On the aforesaid finding, a revision application would lie to the District Magistrate and it appears that such a revision application was preferred by the applicant to the District Magistrate who rejected the same on the ground that a revision application was not competent. The result has been that the proper revisional authority did not entertain the revision application of the petitioner and when he filed a revision application to the High Court, it is found that the High Court has no power to act under sub-section (1) of Section 435. The District Magistrate was obviously wrong in not entertaining the application for revision filed by the applicant in view of the clear provisions of the Criminal Procedure Code referred to above. Although, therefore, the High Court would not have the power to interfere by way of revision under the Code of Criminal procedure, the case is pre-eminently a fit one for interference under Article 227 of the Constitution of India and it is proper that this application should be treated as an application under Article 227 of the Constitution of India. There is an obvious error committed by the District Magistrate who has refused to exercise jurisdiction which was vested in him.

(5) The order, therefore, passed by the District Magistrate, Junagadh, rejecting the application of the present applicant to revise the order passed by the Sub-Divisional Magistrate, Junagadh Division, Junagadh in Criminal Case No. 1 of 1965, is set aside and the District Magistrate should now hear the revision application filed by the present applicant against the aforesaid order of the Sub Divisional Magistrate. No order as to costs.

(6) Application allowed.