

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 316 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE K.J.VAIDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DAHYABHAI KALUBHAI

Versus

M/S.P.T.METAL ROLLING IND

Appearance:

MR HARESH J TRIVEDI for Petitioner

PUBLIC PROSECUTOR for Respondent No. 1

MR J A SHELAT APP FOR RESPONDENT NO.9-STATE

CORAM : MR.JUSTICE K.J.VAIDYA

Date of decision: 29/06/95

ORAL JUDGEMENT

This Criminal Revision Application at the instance of the Gujarat Pollution Control Board, Gandhinagar, is directed against the impugned judgment and order dated 4.5.1994, rendered in Criminal Case No 227/90 by the learned Chief Metropolitan Magistrate, Ahmedabad, wherein the respondent- M/s. P.T.Metal Rolling Industries, situated at Vatva, Ahmedabad, and 7

others, who came to be prosecuted for the alleged offences punishable under sections 24, 25, 43 and 44 of the Water (Prevention and Control of Pollution) Act, 1974, were ordered to be discharged.

2. On going through the impugned judgment and order, it appears that the learned Magistrate has discharged all the respondents mainly on three grounds viz. (1) that provisions of section 21 of the Act have not been duly complied with; and (2) that the name of Mr. Bhavdip Gajjar who collected the sample of the trade effluent from the respondent factory is not shown in the list of the authorised officers published by the Board, and therefore, he had no right or authority to visit the respondent factory and further allow to collect the sample of the trade effluent in question. According to the learned Magistrate, since these two infirmities go to the root of the case, the report of the analyst was inadmissible in evidence and accordingly the accused deserve to be discharged. It is under these circumstances that the present Revision Application is filed before this court challenging the impugned order of discharge passed by the learned Magistrate.

3. Now on carefully going the impugned judgment and order of discharge it is indeed clear that the learned Magistrate in undue haste without appreciating the evidence of panch witness Bhavdip Gajjar who took the sample of the trade effluent has disposed the case in the most cavalier fashion. It is indeed unfortunate that the learned Magistrate without appreciating the evidence of _____ Bhavdip Gajjar has held, that provisions of Section 21(c)() (J) are not duly complied with and on being _____ inquired from Mahendrabhai Mavani present at factory where he desired to be _____ sample analysed by the board, says no and not only that but he placed his signature on the said effluent _____ witness ex.15 where is indeed the _____ of _____ of Section 21 of the Act. This point also came for _____.

4. Mr.H.J.Trivedi, the learned advocate for the petitioner Board submitted that so far as the first ground on which the respondents came to be discharged viz. the provisions of section 21 of the Act are not complied with is concerned the same has indeed no substance as the same has been squarely covered by the decision of this court (Coram : K.J. Vaidya J) rendered in Criminal Revision Application No.277/93 and other allied matters decided on 6.4.1995. Mr. Trivedi further submitted that so far as the second ground on which the respondents came to be discharged viz. the

name of Mr. Bhavdip Gajjar who collected the sample of the trade effluent from the respondent factory is not shown in the list of the authorised officers published by the Board is concerned, the same is of no consequences. According to Mr. Trivedi, the learned Magistrate has committed a patent and obvious error in not appreciating the fact that section 21 of the Act empowers either the Board or any of its officer on its behalf to take sample of the effluent. On the basis of these submissions, Mr. Trivedi finally urged that the present Revision Application be allowed and the matter be remanded to the trial court to be disposed of on merits according to law. Mr. J.A. Shelat, the learned APP supports the submissions made by Mr. Trivedi.

5. At the outset, it may be stated that the submissions made by Mr. Trivedi have great force and deserve to be accepted. It may be stated that so far as the first ground for discharge is concerned, the same is squarely covered by the decision of this court (Coram: K. J. Vaidya J) rendered in Criminal Revision Application No. 277/93 and other allied matters decided on 6.4.1995. Accordingly, for the sake of brevity and convenience, adopting the very same reasonings, as given by this court in the aforesaid Criminal Revision Application No. 277/93 and other allied matters, as a part of this judgment.

5(1) Now so far as the second ground for discharge is concerned, Mr. Trivedi submitted that at the relevant time when Mr. Bhavdip Gajjar took the sample of the trade effluents, he was Junior Engineer, and at the relevant point of time, the Junior Engineers of the Board were authorised by the Board to take the samples of the trade effluents. Mr. Trivedi further submitted that thereafter the said post of Junior Engineer was abolished and re-designated as Assistant Engineer. Thus, according to Mr. Trivedi, there is no substance in the second ground for discharge.

(2) On going through the record, it appears that the learned Magistrate has committed a patent and obvious error in not appreciating section 21 of the Act which empowers either the Board or any of its officer on its behalf to take sample of the effluents. The reasoning given by the learned Magistrate is as false and unsustainable as it could be. Reading section 21 of the Act, it is very clear that an officer who is empowered to take sample of the trade effluent is not required to be named. What section 21 of the Act requires is that the officer of the Board should be so empowered to take the

sample of the trade effluents. On going through the record of the case, it appears from the evidence of Mr. Bhavdip Gajjar that on 25.9.1989 he was discharging his duties as Assistant Environment Engineer of the Board at Ahmedabad, and that by virtue of his designation he collected the trade effluents for which he was empowered by a resolution of the Board. A copy of the said Resolution is produced at Exh.12. On reading Ex.12 it appears that so far as exercise of powers under section 21 of the Act to take sample is concerned, the same is vested in 9 officers of the different designations mentioned therein. It is true that at the relevant point of time Mr. Bhavdip Gajjar was a Junior Environmental Engineer, but this post was subsequently re-designated as Assistant Environmental Engineer by two resolutions dated 5.10.1981 and 19.7.1985. It appears that while giving evidence before the court and tendering Ex.12, the resolution dated 5.10.1982 was annexed, but somehow it is not found on the record. Whatever be the case, the said resolution is now placed before this court on affidavit. In this view of the matter, the learned Magistrate has committed a patent and obvious error on this point. When section 21 of the Act provides the State Board also to empower any officer for taking the sample of the trade effluent, it would be a sufficient compliance if the officer is holding the post and for that purpose it is not necessary that he should be named. In this view of the matter, since the order of discharge is ex-facie erroneous, the same deserves to be quashed and set aside.

6. This Court is quite conscious of the fact that this matter is at the admission stage and ordinarily if there is merit in the matter, Rule is required to be issued to the other side. But having regard to the facts and circumstances of this case, the reasons given by the learned Magistrate for discharge demonstrate glaring perversity and as a result of which remand is only foregone and inescapable and irreversible conclusion which even after issuance of the notice to the other side and hearing cannot be prevented, there is no sense in mechanically issuing the Rule and thereby unnecessarily subjecting to the accused to physical, mental and financial inconveniences by engaging the advocate and attending the court etc. etc.

7. In the result, this Criminal Revision Application is allowed. The impugned judgment and order discharging the respondents is hereby quashed and set aside. The case is remanded to the trial court for framing charge and deciding the same on merits according to law as expeditiously as possible preferably on or before

31.12.1995. The complainant is directed to appear before the learned Magistrate at the earliest and take the notice from the learned Magistrate and serve the same upon the respondents and in the event of any difficulty, take assistance of the police officer of the concerned area.