

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 308 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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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?

SAIYEDMIYA AHMEDMIYA SAIYED

Versus

STATE OF GUJARAT

Appearance:

MR US BRAHMBHATT for Petitioner

Mr. Satish A Pandya, Addl. PUBLIC PROSECUTOR for
the respondent.

CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 31/07/97

ORAL JUDGEMENT

Rule. Mr. S.A.Pandya, the Learned APP waives service.

No doubt, trial Court and the Court of Appeal both have held against the petitioner-accused. The decisions of both the Courts are based on report of hand-writing expert produced at exh. 103. The charge against the accused-petitioner was that of the offence

under section 406, Indian Penal Code. It related to sale of a truck which was effected in favour of the original complainant initially and thereafter according to the complainant, it was taken away by the petitioner-accused and sold away. The defence allthroughout was that the complainant had returned the truck for which a writing was executed and as stated therein, part payment was also made.

2. The complainant side was insisting that this writing is a got up one and does not bear the signature of the complainant. It was sent for the opinion of hand-writing expert and his report was received with covering letter at exh. 98. No sooner it was received, all the letters accompanied with the said exh. 98 including hand-writing expert's opinion came to be exhibited by the trial Court.

3. Obviously, this being a document not covered by section 292 of the Code of Criminal Procedure, it could not have been straightaway exhibited without examining the expert who has given the opinion.

4. As if this is not enough, it was complainant side which was challenging the genuineness of this document and it was the defence who was maintaining that this is a genuine document. One would have therefore, expected the Magistrate to allow either of the sides to put appropriate questions to the expert who has given the opinion in a particular manner. Far from it being done, the report itself is received after the trial is concluded and even final arguments were heard and submissions were made with regard to the alleged offence.

5. The least that could have been done was to call the expert who was ready to come as per exh. 98 report on payment of charges of Rs.250/- per day. The expert is therefore, required to be examined and then alone the said document can be taken into consideration.

6. The findings and holding the petitioner-accused guilty is therefore, set aside. The Criminal case No. 2760 of 1983 is put back to the stage where it was when the said letter exh. 98 was received, to be dealt with further from that stage. The expert to be called for being examined as a defence witness and therefore, the accused shall have to bear initial expenses.

7. If the petitioner-accused fails to defray those expenses or does not co-operate in getting the said

witness before the Court, law will take its own course.

8. Subject to the aforesaid observations, judgment in the said Criminal case no. 2760 of 1983 as well as appeal no. 20 of 1991 both are set aside. Said Criminal case is remanded to the court of the Judicial Magistrate, First Class, Anand for being proceeded further in the manner stated above. After the evidence of the hand-writing expert is recorded, the learned trial Magistrate shall hear both sides and come to the conclusion as to guilt or otherwise of the petitioner-accused afresh. For this purpose, no doubt, he shall read the evidence which is already on record and to that will be added the deposition of the hand-writing expert as and when recorded. Looking to the fact that the case is very old, it shall be given top priority and shall be dealt with to the extent possible on day to day basis. In any case, when the expert is called, the matter shall not be adjourned and shall be concluded on taking the trial on day to day basis. The Revision Application accordingly stands allowed. Rule is made absolute. As conviction is set aside, there is no question of the accused being taken in custody pursuant to the conviction order. He shall continue to take benefit of earlier bail and shall remain on bail and shall be bound by all the conditions that might have been imposed upon him.

(N.J.Pandya,J)

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