

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1293 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA

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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?

JIGAR VITTHALBHAI DATANIA

Versus

STATE OF GUJARAT

Appearance:

MR DIPAK R DAVE for Petitioner
Mr.Y.F.Mehta, ADDL.PUBLIC PROSECUTOR for
Respondents.

CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 29/09/97

ORAL JUDGEMENT

Copy of the appeal-memo of Criminal Appeal before the Home Secretary, State of Gujarat, Gandhinagar, as produced by the learned Advocate for the petitioner, be taken on record.

Rule .Mr.Y.F.Mehta, learned APP, waives service of rule for the respondent-State.

By this Special Criminal Application under Article 226 of the Constitution of India, the petitioner has questioned the validity of the order dated 14.7.1997 at Annexure 'E' to the petition. By the said order, the third respondent refused to condone the delay in filing the appeal against the order of externment passed against the petitioner.

The petitioner, who is a Watchman in the Ahmedabad Municipal Corporation, has alleged that he was victimised by the Corporation, as he had challenged the order terminating his services before the Labour Court and also before the High Court. In all the proceedings, he succeeded and eventually he was reinstated in service. However, on 14.7.1995, a show cause notice was issued against the petitioner to show cause why he should not be externed from the Districts of Ahmedabad (Rural), Gandhinagar, Kheda and Mehsana. According to the petitioner, he was sick and became seriously ill and therefore could not prefer appeal against the said externment order in time. He, however, thereafter preferred the appeal on 20.6.1997 requesting the appellate authority to condone the delay in filing the appeal, as he could not prefer it within the period of limitation on account of circumstances beyond his control. The appellate authority, by the impugned order, without considering the merits of the case of the petitioner in regard to condonation of delay in filing the appeal, dismissed the appeal. The appellate authority conveyed to the petitioner by the impugned order dated 14.7.1997 that there were no legal grounds to condone the delay in filing the appeal. The impugned order, per se, is non-speaking order, inasmuch as it does not deal with any of the grounds taken by the petitioner for condonation of delay.

On plain reading of the impugned order, it is clear that the appellate authority has not applied its mind before rejecting the appeal on ground of limitation. Mr.Y.F.Mehta, learned Addl. Public Prosecutor, appearing for the respondents, states that the appellate authority should have considered the grounds raised by the petitioner in regard to condonation of delay, in detail.

The impugned order thus suffers from the vice of non-application of mind. The impugned order is, therefore, unsustainable.

In the above view of the matter, the Special Criminal Application is allowed. The impugned order is quashed and set aside. The appellate-authority, the respondent No.4, is hereby directed to consider the request of the petitioner for condonation of delay, on merits and in accordance with the law, by assigning proper and just reasons for the conclusion which he reaches, and after giving opportunity of hearing to the petitioner. Rule is accordingly made absolute.

Direct Service permitted.
