

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5568 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
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? : NO

STATE OF GUJARAT

Versus

MANJULABEN SURENDRAKUMAR AGRAWAL

Appearance:

MR UMESH TRIVEDI for Petitioner

MR AD SHAH for the opponents.

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 30/09/1999

ORAL JUDGEMENT

1. Heard Mr. Trivedi, learned Additional Public
Prosecutor and Mr. A.D. Shah, learned counsel for the
opponents.

2. Rule. Mr. Shah waives service of Rule on behalf
of the opponents. With the consent of the parties, the
matter is taken up today for final hearing.

3. By this application, the State has sought, inter alia, following reliefs :-

"(a) Your Lordships may be pleased to admit and allow this application;

(b) Your Lordships may be pleased to extend/grant stay granted by this Hon'ble Court earlier in Criminal Revision Application No.220/1999 further for a period of four weeks;"

4. The original revision applications arose on question of discharge of two of the accused persons facing trial before City Sessions Court, at Ahmedabad, in Sessions Case No.195 of 1998. This Court decided those revision applications by judgment and order dated 23rd/24th July, 1999. When the revision applications were admitted, stay of further proceedings, during the pendency of the revision applications, before the trial Court was granted. At the time of disposal of the revision applications, learned Additional Public Prosecutor requested for continuing the interim relief granted earlier and this Court made following observations :-

"28. At this stage Mr. Trivedi, Ld. APP requests for continuing the interim relief granted earlier for period of 8 weeks to enable the prosecution to approach and challenge the order before the Apex Court. The request is objected by Mr. Shah stating that trial is being delayed for long time and two accused are in jail. Keeping these circumstances in mind, the interim relief granted earlier is directed to continue to operate for period of 6 weeks. Rule is discharged in Crim. Revision Application No.141/99. So far as Crim. Revision Application No.220/99 is concerned, Rule is made absolute to the aforesaid extent."

5. Now the State has come with this application for extension/grant of stay granted by this Court earlier in the said Criminal Revision Application No.220 of 1999 for a further period of four weeks.

6. It has been contended by Mr. Trivedi, learned Additional Public Prosecutor that, although six weeks'

time was granted by this Court, the State could not approach the Apex Court to challenge the order of this Court as the decision was taken only on 21st September, 1999 to challenge the order before the Apex Court. He submitted that the time was consumed in obtaining copy and, thereafter, time was consumed in procedural decision making by the Government and urged that four weeks' time may be granted.

7. Mr. Shah, learned counsel appearing for the accused-opponents has strongly opposed this application. He submitted that this Court has become functus officio and has no jurisdiction to pass this order as the six weeks' time granted earlier by the Court vide order dated 23rd/24th July, 1999 ended on 4th September, 1999 and the present application came to be preferred on the 13th September, 1999. Under the circumstances, the relief sought may not be granted. He has pressed in service the decision in the case of Lala Jairamdas and Ors. v. Emperor, as reported in A.I.R. (32) 1945 Privy Council 94.

8. Mr. Trivedi, learned Additional Public Prosecutor, submitted that this decision may not be applicable to the facts of the present case on the ground that in that case, the question was for grant of bail after conviction.

9. Taking into consideration the rival side contentions, certain factual aspects need to be stated at the outset. Revision Applications No.141 and 220 of 1999 came to be decided on 23rd/24th July, 1999. It transpires that, copy was applied for by the State on 27th July, 1999. The said copy was ready on 19th August, 1999 and was received on 27th August, 1999 and decision seems to have been taken on 21st September, 1999 for challenging this order. In the meantime, the present application is preferred on 13th September, 1999.

10. The objection raised by Mr. Shah is difficult to be accepted for the reason that this Court had exercised its inherent powers while continuing the stay granted earlier for a period of six weeks. The Court is still siezed of that power and, therefore, if a party wants to challenge the order of this Court before the Apex Court, it would not be proper for this Court to shut the doors to that path by refusing to exercise the powers.

10.1 In the case of Lala Jairamdas (supra) relied upon by Mr. Shah, the question was whether the High Court could have granted bail after confirming the conviction

to enable the accused to approach the Privy Council. In that case, it was observed as under:-

"Finally Their Lordships take the view that Chapter 39 of the Code together with Section 426 is, and was intended to contain a complete and exhaustive statement of the powers of a High Court in India to grant bail, and excludes the existence of any additional inherent power in a High Court relating to the subject of bail."

In this view of the matter, in the view of this Court, this decision cannot apply to the facts of the present case as it was observed in that case that, at that point of time, Chapter 39 of the Code together with Section 426 was intended to be a complete and exhaustive statement of powers of a High Court in India on question of grant of bail and excluded the existence of additional inherent powers on question of bail. The question before this Court, at this point, is whether to extend the stay of further proceedings before the trial Court and whether for that purpose, the plea of functus officio as taken by the opponents may be accepted.

10.2 In this regard, decision of the Apex Court in the case of Jaipur Mineral Development Syndicate v. Commissioner of Income Tax, New Delhi, (1977) 1 SCC 508 may be considered. In that case, reference made to the High Court at the instance of the assessee came to be dismissed for non-appearance and Their Lordships held that the High Court was not functus officio in entertaining application for re-hearing on sufficient reason for non-appearance being shown. Thus, even after the matter was dismissed, the Court was not considered to be functus officio incapacitating it to pass any order.

10.3 Likewise, in the case of Madras Fertilizers Limited v. Assistant Collector of Central Excise, Madras V Division, Madras, (1994) 2 SCC 295, it was held that the Assistant Collector did not, by revoking his earlier order, transgress his jurisdiction. The contention that having passed the earlier order in pursuance of the revisional order of the Government of India, the Assistant Collector had become functus officio and could not have reopened the matter was rejected by Their Lordships.

11. In this view of the matter, when the State has shown that decision was taken only on 21st September, 1999 to challenge the order of this Court before the Apex Court, the application requires to be favourably

considered. If that is not done, the trial Court would proceed with the Sessions Case and if at a later stage the order of this Court is set aside by the Apex Court, it may lead to many legal complications and, therefore, the judicial prudence also requires that period of stay of the proceedings be extended.

11.1 A reference may be made to Section 482 of the Code of Criminal Procedure which empowers this Court to make such orders as may be necessary to prevent the abuse of process of any Court or otherwise to secure the ends of justice. In view of this Court, as discussed above, if the extension of stay is not granted, it may lead to legal complications and put one of the parties to the litigation to jeopardy and, therefore, this Court is inclined to accept this application to secure the ends of justice and to grant the stay of proceedings before Supreme Court as a last chance to the applicant.

12. As regards time, the applicant-State was given time, already, by grant of six weeks, but the procedural delay in decision making has given cause for this application. When the decision is already taken, this Court does not deem it fit to grant four weeks time as is prayed for. At the same time, considering the bunch of papers that would be required to be translated into English, reasonable time has to be given so that grant of time may not be insufficient and may not result into denial of the grant of relief. The period of six weeks expired on 4th September, 1999. Today is 30th September, 1999. The State has already got a breathing time of about three weeks and in this view of the matter, the Court is inclined to grant two weeks time.

13. The application is, therefore, partly allowed to that extent. The proceedings before trial Court are stayed for a period of two weeks from today, i.e. upto 14.10.1999. Rule is made absolute to the aforesaid extent. Direct service permitted.

[A.L. DAVE, J.]

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