

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 33 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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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? :

BABUBHAI LALABHAI KHATKI

Versus

ATATE OF GUJARAT

Appearance:

MR RR MARSHALL for Petitioners
MR SK PATEL, APP for Respondent-State.

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 29/09/2000

ORAL JUDGMENT

The petitioners-original accused of Criminal Case No.905 of 1989 have filed this petition to quash and set aside the judgment and order dated 11-12-91, passed by the learned Additional Sessions Judge, Vyara, in Criminal Appeal No.17/91. Vide said order dated 11-12-91, the learned Addl. Sessions Judge, Vyara, partly allowed the

appeal by setting aside the sentence imposed by the learned J.M.F.C., Vyara, under Section 447 of the Indian Penal Code and directed the petitioners to undergo simple imprisonment for three months and to pay a fine of Rs.200/- in default, to undergo simple imprisonment for a further period of 30 days for the offence punishable under Section 379 read with Section 114 of I.P.C.

2. Brief facts of the case are as under :

On 4-2-89 the complainant-Security Officer was on duty at the main gate of Thermal Power Station. At that time, at about 12.15 p.m., the complainant checked the Truck bearing registration No. G.T.C. 4449 and he found that certain scrap being carried away by the petitioners without any gate pass for the same and, therefore, the complaint was filed by the complainant against the petitioners before the Ukai Police Station which came to be registered as I C.R. No.9/89 and after investigation, I.O. submitted the charge-sheet in the Court against the present petitioners and it was registered as Criminal Case No.905 of 1989 and charge was also framed wherein accused pleaded not guilty to the said charge and, therefore, prosecution was directed to prove the charge against the petitioners. To prove the same, the prosecution examined various witnesses including the complainant-Security Officer and person from G.E.B. and after recording the further statements of the petitioners-accused and after hearing learned counsel appearing for the respective parties, the learned Judicial Magistrate First Class, Vyara, vide his order dated 26-6-91 convicted the petitioners to undergo simple imprisonment for a period of six months and to pay a fine of Rs.200/- in default, to undergo simple imprisonment for a further period of 10 days for offence under Section 379 read with Section 114 of the Indian Penal Code. They were also directed to pay a fine of Rs.150/- in default, to undergo simple imprisonment for a further period of 5 days for the offence under Section 447 of the Indian Penal Code.

3. Against the said judgment and order of conviction, the petitioners preferred appeal being Criminal Appeal No. 17 of 1991 before the learned Sessions Judge, Vyara. The learned Addl. Sessions Judge, Vyara, vide his order dated 11-12-91, partly allowed the appeal by setting aside the sentence imposed by the learned J.M.F.C., Vyara, under Section 447 of the Indian Penal Code and directed the petitioners to undergo simple imprisonment for three months and to pay a fine of Rs.200/- in default, to undergo 30 days simple

imprisonment further for the offence punishable under Section 379 read with Section 114 of I.P.C. Against the said judgment and order, the petitioners have preferred this Criminal Revision Application.

4. Heard Mr.R.R.Marshal, learned advocate for the petitioner and Mr. H.L.Jani, learned A.P.P. for the respondent-State. I have also gone through the judgment and order of the lower Courts. Learned advocate for the petitioners has argued that the learned Addl. Sessions Judge has failed to appreciate the fact that there were no identification mark upon the muddamal and the prosecution has failed to prove that the muddamal was of the ownership of G.E.B. According to him, it is established during the cross-examination of various witnesses of the prosecution that same type of muddamal are also available in the market. It was further argued that there is no evidence on record which prima facie proves the guilt against the petitioners.

5. I have also heard learned APP for the State and also gone through the record and proceedings which have been shown to me by the learned advocates for the respective parties. The prosecution has failed to establish that the muddamal in question was of the ownership of GEB and, therefore, it has failed to establish the guilt of the accused. It is established from record and proceedings and panchnama that there is no specific mark of identification placed on the muddamal in question from which the Court can come to the conclusion that the said muddamal was of the ownership of the GEB. It is required to be noted that practically all the witnesses have admitted in their cross-examination that same type of muddamal are easily available in the market. Merely because the petitioners were there with their truck in question does not mean that the offences alleged against them are proved. The offence took place on 4-2-89 and since then the petitioners are under mental agony. The report of Probation Officer, which was called for by this Court, is also in favour of present petitioners. The petitioners in their respective affidavits have stated that except the present complaint, there is no other criminal complaint filed against them involving them in any offence either prior to the present complaint or even thereafter. The affidavits filed by the petitioners and the report of the Probation Officer are ordered to be taken on record. It appears from the report of Probation Officer and the affidavit filed by the petitioners that the record of the petitioners for the last 10 years is clear. After verifying the oral and documentary evidence which are on record and also in view

of the aforesaid facts and circumstances of the case, the judgment and order passed by the lower Court is required to be quashed and set aside.

6. As result of the foregoing discussion, this Criminal Revision Application is allowed. The judgment and order of conviction dated 11-12-91, passed by the learned Addl. Sessions Judge, Vyara, in Criminal Appeal No.17 of 1991 is hereby quashed and set aside. The petitioners are ordered to be set at liberty forthwith if not required to be detained in any other case. Fine, if any, paid by the present petitioners are ordered to be refunded back to the petitioners. Rule made absolute to the aforesaid extent. This order has been passed in special facts and circumstances of the case and, therefore, it should not be treated as a precedent.

(R.P.Dholakia, J.)

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