

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 366 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements? No
 2. To be referred to the Reporter or not? Yes :
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? No
 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? No
 5. Whether it is to be circulated to the Civil Judge? No :

BHUPENDRA MANUBHAI MISTRY

Versus

STATE OF GUJARAT

Appearance:

MR KB PANDE for Petitioner

Mr.L.R.Pujari, A.P.P. for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 31/08/2000

ORAL JUDGEMENT

1. List has been revised thrice but none appeared for the revisionist. As such in the 2nd sitting Shri L.R.Pujari, learned A.P.P. has been heard and the impugned order has been examined.

2. The revision is directed against the order dated 9.4.1999 of Additional Sessions Judge, Vadodara, whereby he has rejected the application of the revisionist under Section 227 of the Code of Criminal Procedure for discharge.

3. It appears that the charge sheet was submitted by the P.S.I., A.C.B., against the revisionist for committing offences punishable under the Prevention of Corruption Act. The contention in the application under Section 227 of the Cr.P.C. was that P.S.I., A.C.B. is not authorised to carry out investigation u/s.17 of the Prevention of Corruption Act, 1988, and as such the entire investigation is nullity and no charge can be framed on the basis of material collected during such unauthorised investigation.

4. I had examined all the grounds of attack contained in the Memo of revision.

5. The first ground has no substance that the order of the learned Addl. Sessions Judge is laconic. Relevant arguments and the relevant points have been discussed in the impugned order.

6. The second ground of attack is also without substance. In the course of hearing the argument before the learned Addl. Sessions Judge, learned A.P.P. had shown and relied upon the notification issued by the Home Department dated 10.1.1989 wherein it was specifically provided that in exercise of powers conferred by the first proviso to Sub.Section (c) of Section 17 of the Prevention of Corruption Act, 1988 the Government of Gujarat authorises, for the purpose of said proviso, every police officer, not below the rank of Inspector of Police, attached to the A.C.B., Gujarat State. This notification was signed by the Addl. Chief Secretary Mr.R.Balkrishnan to the Government of Gujarat. It is, therefore, not a case where the Police Inspector, A.C.B. was not authorised to carry out investigation.

7. Likewise there is no force in the third ground that the Investigating Officer has investigated the matter without sanction of law. If he was duly authorised by the State of Gujarat to conduct investigation it cannot be said and accepted that the investigation was carried out without sanction of law.

8. The 4th ground is also misconceived. Reliance has been placed upon the Apex Court's verdict in B.K. Srinivasan & ors. v/s. State of Karnataka, reported in A.I.R. 1987 SC 1059 to build up the argument that such notification should have been published in the Official Gazette. I had examined the verdict of the Apex court in B.K.Srinivasan case (supra). It was a case under the Karnataka Town and Country Planning Act. In Para : 8 of

the Judgment the Apex Court has taken into consideration the definition of the word "notification" as contained in Section 2(4) of the said Act which means notification published in the Official Gazette. Consequently in this case there was a specific definition and provision that the notification shall mean a notification published in the official Gazette. If such notification within the definition of Section 2(4) of the Act was not published in the Official Gazette it will lose the character of the notification. However, in the case before me the word "Notification" is not to be found u/s.17 of the Prevention of Corruption Act. The proviso to Section 17(c) of the Prevention of Corruption Act provides that provided that if a Police Officer not below the rank of Inspector of Police is authorised by the State Government in this behalf by a general and special order he may also investigate any such offence without the order of the Metropolitan Magistrate or a Magistrate of the First Class as the case may be, or make arrest therefor without warrant. This proviso therefore dispenses with the requirement of investigation of offences punishable under the Prevention of Corruption Act with the order of a Metropolitan Magistrate or the Magistrate of the First Class. What is contemplated in the proviso is authorisation by the State Government and not the notification by the State Government. The word "notification" is not defined in any of the three definitions contained in Section 2 of the Prevention of Corruption Act. Thus, in the absence of definition of the word "notification" and further in view of the fact that the word "notification" is not mentioned under the proviso to Section 17 of the Prevention of Corruption Act, no notification was required to be issued nor it was required to be published in the Official Gazette. Only authorisation of the State Government was required and this authorisation may be even by a written order which may be kept in the guard file of the department concerned. It is not the requirement of law that such delegation of authority or such authorisation should be made known to the public by a publication in the official Gazette. Consequently it cannot be said that the investigation was carried out without any sanction of law or authority of law or that the notification authorising the P.S.I., A.C.B., should have been published in the Official Gazette. This could not be a ground for discharge. The impugned order was therefore rightly passed by the learned Addl. Sessions Judge in accordance with law.

9. There is also no force in the 5th ground that within the meaning of Section 2(m) of the Cr.P.C. the

notification should have been published in the Official Gazette, for the obvious reason that authorisation u/s.17 of the Prevention of Corruption Act was not an authorisation under the Cr.P.C. and as such there was no requirement of notification nor the definition of notification contained in Section 2(m) of the Cr.P.C. can be applied in the instant case.

10. Likewise there is no merit in the ground No.6 that such notification within the ambit of Section 23(5) of the General Clauses Act should have been published in the Official Gazette. Prevention of Corruption Act is a special law and the provisions contained therein have to be applied and not the provisions in the General Clauses Act.

11. No force is found in the 7th ground of attack that the order is illegal and contrary to law.

12. For the reasons stated above the revision has no merit which is hereby rejected.

sd/-

Date : August 31, 2000 (D. C. Srivastava, J.)

sas