

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 364 of 2001

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 concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

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HASMUKHBHAI SHIVLAL GOSALIA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 364 of 2001
MR YS LAKHANI, with MR PRAVIN GONDALIYA for Petitioner No. 1
MR DESAI, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 29/08/2002

ORAL JUDGEMENT

The revisioner herein was accused No.2 in Criminal Case No. 15 of 1988 before Chief Judicial Magistrate, Amreli. He was charged to have committed offences punishable under Sections 420, 465, 467, 468, 471, 477A and 114 of Indian Penal code. The allegations against him in brief were that while he was holding charge of Executive Engineer for 15 days, he has passed certain bills for works which were not in fact done. The works were supposed to be done by co-accused, who was accused No.3 and the tenders were given by accused No.1. The allegations in substance is that he had abetted illegal activities of accused Nos. 1 and 3 and in order to

complete the crime he had sanctioned the bill.

2. The revisioner tendered application Ex.25 praying for discharge. Learned Chief Judicial Magistrate, after considering the contentions raised before him by the revisioner as well as the learned APP, accepted the application and discharged the revisioner of the charges.

3. Aggrieved by the said order, the State preferred Criminal Revision Application No. 112 of 1991. Learned Sessions Judge by his judgement dated 31.7.2001, accepted the revision and quashed and set aside the order of learned Chief Judicial Magistrate and directed him to frame charge against present revisioner and to complete trial within six months. The said order is under challenge in this Revision Application.

4. Learned Advocate Mr. Lakhani appearing for the revisioner submitted that the revisioner was in-charge of the office of Executive Engineer for a period between 2.7.1981 and 16.7.1981. During this time certain bills were placed before him on completion of the work and he had passed those bills on having found that the works were completely executed. There is evidence to show that the work in question was properly done to the fullest extent as per statement made by Supervisor Mr. M.L. Tejura. Mr. Lakhani therefore submitted that the allegation that work was not done but the bills were sanctioned, is incorrect. The other allegations of illegality having been committed are against accused Nos. 1 and 3, which are either before or after the period during which the revisioner was in-charge of the office. Mr. Lakhani submitted that the learned Sessions Judge has relied on certain statements which indicate that the revisioner has acted in collusion with other accused persons and has defalcated the amount. Mr. Lakhani submitted that in fact those statements do not carry any imputation, nor anything to this effect is said by the witness. All that is stated by the witness is that he has come to know about such events through Police. Learned Advocate Mr. Lakhani has taken through this Court to the statements of the supervisor in question and the witnesses in question to support his arguments. He urged that barring this, there is not an iota of evidence to indicate any complicity of the revisioner while passing the bill. The Sessions Court has therefore committed an error in setting aside the order of the Chief Judicial Magistrate and the revision may therefore be allowed.

5. Learned Additional Public Prosecutor mr. Desai

has opposed to this revision. According to him, the allegations against the revisioner are of such a nature that they cannot be accepted or rejected at this stage unless evidence is led. No harm is going to be caused if the revisioner faces the trial, if there is no evidence he would be acquitted and revision therefore may not be accepted.

6. This Court has gone through the order of the learned Chief Judicial magistrate as well as the impugned order of the learned Sessions Judge. The statements in question are also given a close scrutiny.

6.1 There is no dispute about the fact that the revisioner was in-charge of office of Executive Engineer from 2.7.1981 to 17.7.1981 and all that is alleged to have been done by him is that he has passed the bills for the work done by original accused No.3. The allegation is that the work was not done for which the bill was put and that proper procedure was not followed for issuance and acceptance of tender. Thus, original accused Nos.1 and 3 had joined hands and present revisioner - accused No.2 abetted the commission of the offence of defalcation by passing the bill.

6.2 What emerges from the material is that the revisioner was not instrumental in either issuance or acceptance of tender. There is material on record to indicate that the work was fully executed by accused No.3. This is revealed from statement of Shri M.L. Tejura, dated 20.5.1983. He states that he had taken the measurements of all the work done by accused No.3 and that he had found that hundred percent work was done. He also states that he had made appropriate notings in his measurement book, which was inturn submitted to his higher officer. Thus, it is clear that when the bill was passed, the work was already completely done.

6.3 So far as involvement of the revisioner, as indicated from the order of the learned Sessions Judge on the basis of statement of Pramodrai Girdharlal Gandhi, Valkubhai Champarajbhai Vala and other witnesses is concerned, it is to be noted that this Court has gone through these statements and the witnesses cannot be said to have made any imputation against present revisioner for the defalcation or abetment thereof. What is stated by the witnesses is that they have come to know through Police that such case is made out against the revisioner. This, under no circumstances, can form a basis for even inferring the possibility of conspiracy or abetment by the

revisioner. In absence of any other material there is no point in insisting upon the revisioner to face the trial. The revision therefore deserves to be accepted. In the opinion of this Court, the Court below ran into an error in upsetting the order of learned Chief Magistrate discharging the revisioner, which in the opinion of this Court was the correct conclusion. That order therefore deserves to be upheld.

7. In view of the aforesaid discussion, revision is accepted. Order impugned herein passed by learned Sessions Judge in Criminal Revision Application No. 112/91 on 31.7.2001 is hereby quashed and set aside. Order of the learned Chief Judicial Magistrate passed on 24.11.1991 below Ex. 25 in Criminal Case No. 15/88 discharging the revisioner is hereby restored and revisioner is discharged of the charges levelled against him. Rule made absolute.

(A.L.Dave, J.)

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