IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CRIMINAL APPLICATION NO. 884 of 2016

FOR APPROVAL AND SIGNATURE:
HONOURABLE MS JUSTICE SONIA GOKANI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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STATE OF GUJARAT
Versus
THE REGISTRAR

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Appearance:
MR PK JANI, PUBLIC PROSECUTOR for the PETITIONER(s) No. 1
MR HEMANG M SHAH(5399) for the RESPONDENT(s) No. 1

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CORAM: HONOURABLE MS JUSTICE SONIA GOKANI

Date : 09/08/2016

ORAL JUDGMENT

1. By way of present petition preferred under Article 226 of the Constitution of India read with section 482 of the Code of Criminal Procedure, 1973, the petitioner-State has challenged the legality and validity of the order dated February 02, 2016, rendered by the learned 3rd Additional District Judge, Deesa below Exhibit 73 in Sessions Case No.128 of 2012, whereby the learned Judge fined Rs.200/- to the petitioner No.2-Collector and in default to undergo simple imprisonment for five days

under section 350 of the Code of Criminal Procedure.

2. It is the case of the petitioners that one first information report being I-C.R. No.107 of 2012 was lodged with Deesa Rural Police Station. During the course of investigation, the accused was arrested and after the chargesheet, the matter was committed to the Court of Sessions, which was numbered as Sessions Case No.128 of 2012. Pending trial, the accused was enlarged on bail, however, he did not remain present and, therefore, his surety viz. Mr.Gokhramji alias Ghukhaji Karsanji Thakor, was summoned, who too was not found.

2.1 In pursuance of the same, certain directions were issued under Form No.50 of the Bombay Land Revenue Code, to the petitioner No.2-Collector, Banaskantha, *vide* order dated December 15, 2015, whereby he was directed to take action for recovery of fine of Rs.15,000/- by following the procedure laid

down under the Code within a period of 10 days from the date of such order.

2.2 In view of such order, the petitioner No.2 appointed the Mamlatdar, Dhanera, to comply with the said order dated December 15, 2015, vide order dated December 17, 2015, for recovery under the Bombay Land Revenue Code. Further, a reminder was also sent to the Mamlatdar, Dhanera, vide communication dated December 31, 2015, qua the aforesaid recovery. While the said procedure was going on, the learned Judge by a personal communication dated January 16, 2016, communicated that the directions of the Court were not complied with and both i.e. the Collector and the Mamlatdar, had failed to remain present before the Court and, therefore, the petitioner No.2-Collector was to give written explanation as to what was the reason for remaining absent and the matter was kept on January 28, 2016.

2.3 By way of communication dated January 18, 2016, the Resident Additional Collector,

Banaskantha, addressed a letter to the Mamlatdar, Dhanera, for complying with the earlier directions of the Collector as directed by the learned Judge. The Mamlatdar vide letter dated January 19, 2016, to the said learned Judge communicated that as the amount of Rs.15,000/- was not recovered, the procedure laid down under the Revenue Code has been started; and by letter dated January 21, 2016, the Mamlatdar communicated to the petitioner No.2-Collector that the amount of Rs.15,000/- has already been recovered from the wife of the surety and he personally has deposited the same in the District Court, Deesa, vide receipt bearing No.271479.

2.4 The petitioner No.2-Collector vide letter dated January 22, 2016, communicated to the Registrar, Court of the Third Additional Sessions Judge, Deesa, that as per the order passed by the learned Judge dated January 16, 2016, the amount has been recovered and deposited in the Court and no recovery was pending. Further, the petitioner No.2 *vide*

letter dated January 22, 2016, appointed the Deputy Collector, Dhanera, to remain present before the learned Judge on January 28, 2016 and to apprise the learned Presiding Officer about the development in the matter. The petitioner No.2 also vide letter dated January 28, 2016, addressed to the learned Presiding Officer, explained as to why he was absent by stating therein that there was monthly programme of grievance redressal (Rajya Swagat Programme) and, therefore, he had deputed the Deputy Collector to remain present in the Court and to apprise the Court about the development in the matter. The Deputy Collector, Dhanera, remained present and apprised the learned Presiding Officer of the details. However, on that day, the Court insisted on personal presence of the petitioner No.2-Collector, Banaskantha. On January 30, 2016, the learned Judge addressed a letter to the petitioner No.2-Collector, asking him qua the details of the work done by him and also asked him as to what he was doing

from 10-30 a.m. to 06-10 p.m. and also in the evening on January 28, 2016. The petitioner No.2 was asked to remain present on February 02, 2016. It was further stated that if his explanation is not found satisfactory, it would be referred to the High Court for contempt reference. The petitioner No.2 on February 01, 2016, explained in writing his full day engagement from 08-00 a.m. till 05-00 p.m. On February 02, 2016, the learned Presiding Officer when found that the petitioner No.2 is not present, initiated proceedings under section 350 of the Code of Criminal Procedure and fined him an amount of Rs.200/- and in default to undergo simple imprisonment for a period of five days. Hence, the petitioners are before this Court praying for the following reliefs :

> *"7(A) This Honourable Court be pleased to issue a writ of certiorari or any other appropriate writ, order or direction in the form of certiorari or any other appropriate writ, order or direction, quashing and*

setting aside the impugned order of punishment dated 02.02.2016;"

3. An affidavit-in-reply has been filed by the Registrar, Additional District Court, Deesa, Banaskantha, denying all the averments. It is urged that the Mamlatdar, Dhanera, did not carry out the procedure within a period of 12 days from December 17, 2015 i.e. on or before December 31, 2015. He, in fact, entered the mutation entry after the notice dated January 16, 2016 issued to the petitioner No.2 and the letter dated January 18, 2016. Again the Mamlatdar, Dhanera, did not remain present before the Court and submitted the communication. It is also urged that the warrant issued under section 446 had not been complied with. The same being a judicial order, the petitioner No.2 and the Mamlatdar were under legal and statutory obligation to comply with the order passed by the Court. The petitioner No.2 also deliberately avoided the same as on the earlier occasion, the very Court had referred the contempt reference against the

petitioner No.2 on April 21, 2015 and this Court had taken cognizance and had issued notice to the petitioner No.2 while dealing with Miscellaneous Civil Application No.2104 of 2015. The learned Assistant Government Pleader had assured on the part of the petitioner No.2 that so far as the Collector, Banaskantha, is concerned, the notice and communication would be attended with due diligence and with this assurance, this Court had dropped the proceedings against the petitioner No.2. The said assurance was not abided by and the action was taken by the Mamlatdar. Hence, this casual approach had led to the entire issue. It is further urged that the Mamlatdar, Dhanera, was addressed a letter dated January 18, 2016, by the petitioner No.2, but he did not remain present on either 18th, 19th or 20th January, 2016, however, instead of that remained present on January 21, 2016 with cash amount of Rs.15,000/- received from the surety. It was only after issuance of notice dated January 16, 2016, the petitioner No.2 and the Mamlatdar,

Dhanera, initiated action and this is not the first time that the petitioner No.2 has not complied with the Court's order. It is the say of the deponent of the affidavit-in-reply that the letter dated January 22, 2016, was not forwarded to the Court. The petitioner No.2 did not remain present on January 28, 2016. Even an additional opportunity was granted to remain present on February 02, 2016, however, the petitioner No.2 even did not appear on that day and, therefore, the order of the learned Presiding Officer was not complied with. The same was sent by a fax message and the original was sent on February 04, 2016. The impugned order was passed in presence of the learned Additional Public Prosecutor and other advocates of the Deesa Bar. The fine was imposed under section 350 of the Code of Criminal Procedure for non-compliance of two consecutive orders of the learned Presiding Officer.

4. This Court has at length heard Shri P.K. Jani, learned Additional Advocate General, who has fervently made his submissions stating that it

is unheard of that a learned Presiding Officer would address any communication directly to the Collector in any pending judicial proceedings. It is urged that the petitioner No.2-Collector and his subordinate officers are bound to comply with the orders of the Court, but when it comes to recovery of amount due to non-presence of the surety, the fine needs to be recovered as per the Land Revenue Code and that in no manner would make it obligatory on the part of the petitioner No.2-Collector to personally go and do anything. He, being the administrative head of the concerned district, shall have to administer everything and in the present case, he had immediately complied with the by writing a communication to the Mamlatdar concerned and eventually the Mamlatdar also had mutated the entry for the amount to the tune of Rs.15,000/- and later on, the wife of the surety had given the sum of Rs.15,000/-. The receipt in that respect had also been produced and, therefore also, there was no question of taking further steps. He has urged that some directions also

would be necessary in a case like this, as otherwise it would derail the administration and also disturb the equilibrium since smooth working of the administration in the district is equally vital. It is further urged that the impugned order has been passed only with a view to satisfy the ego and such tendency requires a check.

5. Shri Hemang Shah, learned Standing Counsel appearing for the respondent, has fairly submitted that the personal communication by a judicial officer to any party is not desirable, however, in the present case, it was by way of a good-will gesture that such a communication is addressed, but that should not divert the attention of the Court as earlier also the petitioner No.2 had disobeyed the order of the very learned Presiding Officer and, therefore, there was a need to refer the matter to the High Court for contempt. The Division Bench of this Court while dealing with Miscellaneous Civil Application No.2104 of 2015, on October 12, 2015, directed the Collectorate, Banaskantha, to

attend to the Court's notice and communicate with due diligence and promptness and with that condition only, the Division Bench had dropped the contempt proceedings and emphasised that strict adherence should be made of the assurance and, therefore, when the learned Presiding Officer saw non-compliance and even the assurance given to the Division Bench was breached, he had acted strictly and, thus, no interference is desirable.

6. On hearing both the sides and consideration of the material on record, for the reasons to follow hereinafter, the impugned order deserves to be quashed :

6.1 The genesis of the impugned order is absence of accused, who has been bailed out in an offence registered with Deesa Rural Police Station being I-C.R. No.107 of 2012. Sessions Case No.128 of 2013, when was to be proceeded with, his absence had led to issuance of notice to the surety. The surety since was not found, the learned Presiding Officer had

directed on December 15, 2015 under Form 50 of the Bombay Land Revenue Code to the petitioner No.2 to take action for recovery of Rs.15,000/- from the surety by following the procedure laid down under the Bombay Land Revenue Code within a period of 10 days.

6.2 It is to be noted that on December 15, 2015, such an order came to be passed and in two days' time i.e. on December 17, 2015, the petitioner No.2 appointed the Mamlatdar, Dhanera, directing him to comply with the order of the Court for effecting recovery under Bombay Land Revenue Code. On January 18, 2016, the Resident Additional Collector, Banaskantha, had communicated to the Mamlatdar, Dhanera to comply with the direction of the petitioner No.2 and on January 19, 2016, the Mamlatdar had communicated that the amount of Rs.15,000/- was not recovered and he started the procedure prescribed under the Bombay Land Revenue Code and kept a charge of Rs.15,000/- by way of a mutation entry in the revenue record. By

another communication dated January 21, 2016, the Mamlatdar intimated to the petitioner No.2 *inter alia* stating therein that the amount has already been recovered from the wife of the surety and he has personally deposited the same with the District Court.

6.3 It is to be noted that the Court had directed the entire amount to be obtained within a period of 10 days vide order dated December 15, 2015, which would get over on December 25, 2015. Although the petitioner No.2 had already addressed a communication on December 17, 2015, one more communication had been made on December 31, 2015. After awaiting for a substantial period, on January 16, 2016, a communication was addressed by the Presiding Officer himself to the petitioner No.2 under the subject *"Non-compliance of the Court's order"*. It was necessary for the petitioner No.2 to ensure that there is due compliance of the order of the Court. However, he has not accepted to personally execute such order, especially when the machinery was at his

command for the very purpose. It is the concerned Mamlatdar, who would be required to recover such amount under the Bombay Land Revenue Code. It is also a matter of record that nobody remained present before the Court to explain the reason for the said purpose. The insistence on the part of the Court was for personal presence of the petitioner No.2 or the Mamlatdar for report of execution of the warrant. The Court also referred to earlier incident where the reference was made to this Court for contempt and the Contempt Bench was ensured that the Collectorate, Banaskantha, would abide by the Court's directions henceforth.

6.4 It transpires that the Mamlatdar appears to have geared up after the letter dated January 16, 2016, addressed by the learned Presiding Officer. Further, not only the entry has been mutated by creating a charge of Rs.15,000/- over the property, but very soon he had deposited the sum of Rs.15,000/- with the concerned Court by stating that the wife of

the surety had given the amount towards the forfeiture of the bond.

6.5 Before this Court adverts further to the facts, the provisions of section 446 of the Code of Criminal Procedure, deserves a reference at this stage, which read as under :

"446. Procedure when bond has been forfeited :

(1) Where a bond under this Code is for appearance, or for production of property, before a Court and it is proved to the satisfaction of that Court, or of any Court to which the case has subsequently been transferred, that the bond has been forfeited,or where, in respect of any other bond under this Code, it is proved to the satisfaction of the Court by which the bond was taken, or of any Court to which the case has subsequently been transferred, or of the Court of any Magistrate of the first class, that the bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof or to show-cause why it should not be paid.

Explanation :-A condition in a bond for appearance, or for production of property, before a Court shall be construed as including a condition for appearance, or as the case may be, for production of property, before any Court to which the case may subsequently be transferred.

(2) If sufficient cause is not shown and the penalty is not paid the Court may proceed to recover the same as if such penalty were a fine imposed by it under this Code. Provided that where such penalty is not paid and cannot be recovered in the manner aforesaid, the person so bound as surety shall be liable, by order of the Court ordering the recovery of the penalty, to imprisonment in civil jail for a term which may extend to six months.

(3) The Court may, after recording its reasons for doing so remit any portion of the penalty mentioned and enforce payment in part only.

(4) Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond.

(5) *Where any person who has furnished security under section 106 or section 117 or section 360 is convicted of an offence the commission of which constitutes a breach of the conditions of his bond, or of a bond executed in lieu of his bond under section 448, a certified copy of the judgment of the Court by which he was convicted of such offence may be used as evidence in proceedings under this section against his surety or sureties, and, if such certified copy is so used, the Court shall presume that such offence was committed by him unless the contrary is proved."*

This comes under Chapter XXXIII of the Code of Criminal Procedure under the heading, "*Provisions as to Bail and Bonds*",

6.6 Before any person is released on bail or released on his own bond, a bond for such sum of money as the police officer or Court, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the

bond, and shall continue so to attend until otherwise directed by the police officer concerned. The bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.

Section 444 permits the discharge of surety who can apply to a Court to discharge the bond either wholly or so far as it relates to the applicant and on such application, the Magistrate shall issue his warrant of arrest directing that the person so released be brought before him. On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties, and, if he fails to do so, may commit him to jail.

6.7 In light of the execution of the bond, section 445 of the Code of Criminal Procedure

provides that when any person is required by any Court or officer to execute a bond with or without sureties, such Court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or Government promissory notes to such amount as the Court or officer may fix *in lieu* of executing such bond.

6.8 In this background, when section 446 of the Code of Criminal Procedure is examined, it speaks of forfeiture of bond which may also entail surety for the amount which he had undertaken in the bond executed by him. While invoking powers under section 446 of the Code of Criminal Procedure, the Court may call upon the surety bound by the bond for showing cause as to why the amount of surety should not be paid by him. If sufficient cause is not shown and if penalty is not paid, the Court may proceed to recover as if such penalty were a fine. The Court may also direct imprisonment in Civil Jail upto a period of six months, if the surety does not pay the penalty or if the

same is not recovered by him. It is rightly pointed out by the learned Presiding Officer that once the powers are exercised under section 446 of the Code of Criminal Procedure, the execution is always done through the Investigating Officer and theafter, once there is no recovery of penalty, the Court may recover the same as if such recovery is a fine imposed by it.

6.9 Section 421 of the Code provides for levy of fine in the case of offender who is sentenced to pay fine. The recovery could be by issuance of warrant for the levy of amount by attachment and sale of any moveable property belonging to the offender; or warrant to the Collector of the District, authorising him to realise the amount as arrears of land revenue from the moveable or immoveable property or both, of the defaulter. The proviso to section 421 of the Code provides that in default of payment of the fine, the offender shall be imprisoned and if such offender has undergone the whole of such

imprisonment in default, no Court shall issue such warrant unless, for special reasons to be recorded in writing, it considers it necessary so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under section 357. The State is also to frame Rules regulating the manner in which warrant under Clause (a) of sub-clause (1) are to be executed and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant. Sub-section (3) of section 421 provides that where the Court issues a warrant to the Collector under clause (b) of Sub-section (1), the Collector shall realise the amount in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law. The Court thus while exercising its power for levy of fine issues warrant under sub-section (1)(b) of section 421 of the Code. It is obligatory on the part of the Collector

to realise the amount as provided under section 421 of the Code. When such a warrant is issued to the Collector of the District and he has been authorised to realise the amount as land revenue, the procedure prescribed for recovery of Land Revenue Code is to be followed by him.

7. Reverting to the facts of the case, once the Court had issued warrant to the Collector, he in turn had sent a communication to the Mamlatdar for recovery of Land Revenue. Of course, till January 16, 2016, nothing had been done. There was no report made to the Court concerned. A reminder was sent on December 31, 2015, by the Collector to the Mamlatdar. Thereafter, a communication dated January 31, 2016, was addressed by the learned Presiding Officer directly to the petitioner No.2. He had not only created the charge over the property of the surety, but had also recovered the amount of fine/ penalty from the wife of the surety and deposited in the Court. It is within the knowledge of everyone that the recovery of

penalty or fine by way of land revenue is either to be recovered from the moveable property or by creating charge over the immoveable property and there is a system for recovery of such amount by way of land revenue. It is the judicial order which obliges the concerned authority to comply with and while passing such an order on judicial side, the Court is not to address any communication to the officer concerned, which has been done in the present case. Surprisingly, not only on January 16, 2017, the learned Presiding Officer addressed a communication, but once again on receipt of the reply, the Collector was asked to reply to the learned Presiding Officer as to how he spent his entire day i.e. December 28, 2015. When otherwise on that day, the District Marathon Run was organised. The learned Presiding Officer ought not to have addressed a communication directly to the Collector on the apathy of the Government. This Court is of the opinion nteither deliberately or inadvertently, there was disregard to the order of the Court. At the

same time, everyone is expected to stay within the four corners of law and carry out the duties assigned by in law. Any personal vengeance or vendetta or ego issue can disturb the entire equilibrium which should not surface in the orders of the Court.

8. It is also to be noticed that the fine imposed by the Court by exercising the powers under section 350 of the Code, which is meant for those witnesses who do not attend the Court in disobedience to the summons of the Court. Before a witness is legally bound to appear at a certain place and time, without just execuse neglects or refuses to attend at that place or time or departs from the place where he has to attend before the time atd which it is lawful for him to depart, and the Court before which the witness is to appear is satisfied that it is expedient in the interest of justice that such a witness should be tried summarilly, the Court may take cognizance of the offence and after giving the offender an opportunity of showing cause why he should not be punished or

sentence him to fine not exceeding one hundress rupees. In every such case, the Court shall follow, as nearly as may be practicable, the procedure prescribed for summary trials. Section 350 is, thus, meant for a witness who is summoned to appear before a Court. It is again a question to debate as to whether the Court at all can exercise powers under section 350 of the Code, if there is non-attendance of the Court by the Collector. Even without entering into that arena also, this Court is of the opinion that on the Mamlatdar having produced the receipt for the amount of penalty of the entire amount, which was directed, the issue in question ought to have been closed, may be by observing that the compliance of the same was done belatedly or by reprimanding such a late action. The Court also could have referred the matter to the High Court if at all it was of the opinion that there was willful or deliberate neglect on the part the authority concerned. It, however, transpires that directing fine to be imposed for non-appearance even after noticing the reply on

January 21, 2016, appears to be stretching the issue by making it too personal and obviously making it a matter of ego, which is totally unpalatable and uncalled for. Let all concerned players of this system (Criminal Justice System) remember and remind themselves that ultimately this is meant for safeguarding common men by upkeeping law and order in the society. Individual preferences have no place in this set up.

9. For the foregoing reasons, the present petition succeeds and the same is, accordingly, allowed. The impugned order is quashed and set aside. So as not to see any such repetition in future, while parting, the following directions are found necessary to be issued :

(i) In the matter of forfeiture of bond and invocation of powers under section 421 of the Code, when a warrant is issued to the Collector, authorising him to realise the amount as arrears of land revenue from moveable or immoveable property of the

defaulter, the learned Presiding Officer shall follow the provisions under the Code of Criminal Procedure.

(ii) In the case where the Court issues a warrant to the Collector under clause (b) of sub-section (1) of section 421 of the Code, he is bound under the law to realise the amount in accordance with law, relating to recovery of arrears of land revenue as if such warrant was a certificate issued under the law.

(iii) The Mamlatdar concerned, in such event, is expected to report to the concerned Collector well within the time and the Collector, in turn, to the concerned Court.

(iv) No direct communication be addressed to the Collector. The order of the Court shall be sent to the Collector through Bailiff/ concerned Investigating Officer, as the case may be. Likewise, no communication at a personal level from the office of the Collector be addressed to the learned

Presiding Officer in a judicial matter, as the same is not permissible.

(v) The Court exercising powers under section 421 of the Code, so also under section 446, is expected not to insist on personal presence of the officer, unless of course, if it is of the opinion that there is willful default on the part of the authority concerned in not recovering the amount of penalty. Under that circumstance, the Court can always take recourse available under the law, rather than entering into any personal dialogues, debate and correspondence with the officer concerned.

Disposed of accordingly.

(MS SONIA GOKANI, J.)

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