

STATE OF GUJARAT

v

K.V. JOSEPH ETC.

NOVEMBER 9, 2000

[UMESH C. BANERJEE AND K.G. BALAKRISHNAN, JJ.]

*Judgment—Judgment of High Court challenged by State Government—contention that portion of directions contained in the judgment was not warranted and was without jurisdiction and judgment using strong language—Held, the relevant portion of the directions is rather harsh and the same stands expunged from the judgment—However, findings of the High Court are not disturbed and the judgment shall stand modified accordingly.*

*Vigilance Manual*

*Para 4—High Court declaring para 4 as ultra vires being in direct conflict with Ss. 7, 13, 17 and 19 of the Prevention of Corruption Act—No notice given to Advocate General of the State—Held, the language used in the judgment is rather strong—Restraint and use of temperate language ought to be the basic criteria in the judicial approach—By reason of the factum of non-availability of any opportunity to any of the parties, the judgment cannot be sustained and is set aside—However, considering the nature of allegations and by reason of involvement of high Public Officials, it would be expedient to refer the matter to Central Vigilance Commission for taking appropriate steps in accordance with law—Judicial Propriety—Natural Justice.*

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 601 of 1997.

From the Judgment and Order dated 17.3.97 of the Gujarat High Court in Misc. CrI. A. No. 471/97 in CrI. A. No. 803 of 1995.

WITH

Criminal Appeal No. 602 of 1997.

K.N. Rawal, Additional Solicitor General, Ms. Hemantika Wahi, Ms.

A Smita Inna, P. Parmeswaran, Ms. Anil Katiyar, Vimal Chandra Dave, Sanjay R. Hegde and Satya Mitra for the appearing parties.

The following Order of the Court was delivered :

B The State of Gujarat is in appeal against the judgments of the Gujarat High Court in these appeals. Whereas in Criminal Appeal No 601/97, judgment in its entirety has been challenged as totally without jurisdiction, the Criminal Appeal No. 802/1997, however, is having a limited challenge and the main grievance pertains to certain directions. For convenience sake the Criminal Appeal No. 602/1997 is taken up first for hearing.

C Mr. K.N. Rawal, the learned Additional Solicitor General of India contended that the directions contained at paragraph 26.1 at page 68-69 of the paperbook in particular the last few lines are not only unwarranted but wholly without jurisdiction. For convenience sake the same is set out hereinbelow:-

D “.....In fact, after registering the offence, sanction must be obtained within one month or at the most within two months, and thereafter, the chargesheet should be filed within fifteen days. If round about three months if the chargesheet is not filed, Director General, Anti-Corruption Bureau should call for necessary explanation and take appropriate departmental action against the concerned Investigation Officer and also must request the concerned departmental head to grant sanction immediately. The concerned sanctioning authority from the date of the receipt of papers shall grant sanction within two months failing which he would be liable for the contempt proceedings of this Court in absence of reasonable explanation. It will also be a duty of the trial court to see that if it come across any belated granting of sanction and thereafter filing of the chargesheet, appropriate observations are made against the concerned officials by forwarding a copy of his judgment and order at the highest to Secretary level. Incidentally, it may also be stated that some of the learned PPs in charge of Corruption case do not cite Judgment of this Court and Apex Court in favour of the prosecution. This is too sad!!..”

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H The learned Additional Solicitor General highlighting the initiation of contempt proceedings in the absence of reasonable explanation from the sanctioning authority in the event of there being a delay of two months, contended that judicial proceedings ought not to prompt the judicial officers to apprehend things and pass orders on apprehensions. It has further been

contended that as a matter of fact adaptation of procedure as above would not only denigrate the Judiciary itself but the confidence reposed by the people to the Judiciary would be shaken and resultantly a total anarchy in the judicial system. A

Incidentally, it may be noticed that use of temperate language and tolerance are the two basic factors in any judicial approach and it is in this perspective Mr. Rawal contended that direction as noticed above to the trial court and use of strongest possible language as regards public prosecutors cannot but be said to be rather unfortunate. A generalized statement ought not to be made since restraint is the greatest virtue that one may expect from a judge. B C

We do find some justification in Mr. Rawal's criticism of the judgment.

In this view of the matter, and since the portion indicated above is rather harsh, the same stands expunged from the judgment. Save as above, we do not wish to disturb the finding of the court in the judgment under appeal. We however record our appreciation at the gesture of the learned Add. Solicitor General since he himself submitted that the rest of the order by reason of the subsequent event should not be disturbed in any way. The appeal is, therefore, dismissed though however the High Court's judgment shall stand modified to the extent indicated above. D E

Turning attention on to the Criminal Appeal No. 601/1997 unfortunately however, the judgment under appeal is more pathetically couched and we cannot possibly lend concurrence to use of such strong language by the High Court. Significantly, the Indian Administrative Service Officers Association as also the Union of India have made fervent appeals to this Court for being impleaded as parties so as to be able to advance submissions before this Court at the final disposal of the appeal. We however are not inclined to pass any order on such submission. F

In order however to appreciate the contentions raised in this matter the directions as contained in the judgment are set out hereinbelow:- G

“(1) Portion of para 4 of the Vigilance Manual is in direct conflict with the statutory provisions *viz.* Sections 7, 13, 17, and 19 of the Prevention of Corruption Act the same stands *ultra vires* and null and void.

(2) Once the proposal to grant sanction under Section 19 of the H

A Prevention of corruption Act is forwarded by the investigating agency to competent authorities then to Bureau the same in passing appropriate order beyond the period of 2 months amounts to lack of devotion to duty and in absence of just and proper explanation, the concerned officer would be liable not only for departmental proceedings but also for the contempt of Court.

B (3) It is declared that once the sanction is duly accorded by the competent authority under Section 19 of the Act neither Vigilance Commission not for the purpose any other Department of the State Government has any right, power whatsoever to direct the sanctioning authority either to reconsider or withdraw or in any other way directing it to withdraw the prosecution from the Court.

C (4) The circular dated 13/6/1986 issued by the State Government evoking the earlier circular dated 31st May 1986 is *ultra vires* and are quashed and set aside.

D (5) The charge levelled against Respondent that since he is a part and parcel of the Government he had no business to confront the Government. The said charge levelled by the Government is absolutely unfounded.

E (6) So far as the withdrawal of prosecution is concerned, concerned officers were involved in the process of illegal withdrawals the Chief Secretary shall take immediate necessary departmental and criminal proceedings against those officers."

F Be it noted that the judgment under appeal was delivered by the Appellate Bench of the High Court on the basis of the letter written by the then Incharge Anti-Corruption Bureau and the resultant effect of which is the declaration of para 4 of the vigilance manual as *ultra vires* by reason of the same being said to be in direct conflict with the statutory provisions of Sections 7, 13, 17 and 19 of the Prevention of Corruption Act. No notice however was sent to the Advocate-General of the State before such a declaration was effected and the same thus can not but be termed to be not sustainable.

G While it is true that corruption cases against some influential public servants ought not to be withdrawn at the instance of the Home Department without any basis whatsoever, but in our view in terms of the doctrine of forum convenience the High Court by itself cannot usurp the function in the

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manner as it has in the matter, rather forwarded the same to such of the Institutions as are available in the country for such inquiries. This is a matter of propriety rather than convenience. In any event, time factor also has a definite role to play in the event the matter is to be considered by the High Court itself. Needless to record that the arrear issue is already very high in the agenda and if matters like the present one are taken up by the Court then and in that event the Court itself shoulders the responsibility and resultantly further delay in disposals would be inevitable. Expeditious disposal is the requirement and inordinate delay should always be avoided.

In any event, we do feel however to record that the language used is rather strong and as noticed above restraint and use of temperate language ought to be the basic criteria in the judicial approach. The violation of the principle of natural justice also have been contended by reason of the fact that no notice was sent in the matter for the purposes of any explanation neither any explanation obtained. The court passes an order on the basis of the available materials and upon affording the reasonable opportunity of hearing and in the event there is any deprivation in regard thereto affectation of the cause of justice would be the effect.

In any event by reason of the factum of the non-availability of any opportunity to any of the parties, we do not feel it inclined to proceed with the matter in any further detail. The words and phrases used also to say the least are not very apposite. The judgment thus in any event cannot be sustained.

In that view of the matter, this appeal is allowed. The order under challenge is set aside.

Considering however, the nature of the allegation levelled and by reason of the involvement of high public officials, we do feel it expedient to refer the matter to the Central Vigilance Commission for dealing with the eight instances of sanction of prosecution as adumbrated in the judgment and take appropriate steps in accordance with law, preferably within a period of one year from the date of communication of the order. Costs directed to be paid in terms of the judgment however shall not be recovered.

R.P.

Appeal allowed.