

Narmadaben Patel Vs State of Gujarat

Court: Gujarat High Court

Date of Decision: Oct. 29, 1999

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 482

Hon'ble Judges: C.K. Buch, J

Bench: Single Bench

Advocate: K.L. Dave, for the Appellant; B.Y. Mankad, APP, for the Respondent

Judgement

C.K. Buch, J.

At the request of learned counsel Mr. Dave for the applicant, Cri. Revision Application is permitted to be converted into

Misc. Cri. Application under sec. 482 of the Cr.P.Code. Registry is directed to register the same as such.

2. Learned counsel Mr. K.L. Dave for the applicant tenders original notice dated 12/14.10.1999 addressed by the Police Inspector, Gondal City

along with zerox copies of the chargesheet papers. The same are taken on record.

3. Rule. Learned APP Mr. B.Y. Mankad appears and waives service of Rule for Respondent No.1 State. With the consent of the parties, the

matter is taken up for final hearing today.

4. The applicant (original complainant) has prayed for release of the muddamal from the custody of Gondal Police Station (City) recovered under

CR.I. No. 107/1998. The applicant submitted an application before the learned Addl. Chief Judicial Magistrate, Gondal, for getting muddamal

ornaments and cash amount of Rs. 40,000/ pending the trial which application came to be rejected by the learned Magistrate vide order dated

24.7.1998. Against the said order, the applicant preferred Criminal Revision Application No. 48/99 before the learned Addl. Sessions Judge,

Rajkot District, at Gondal which also came to be dismissed by the learned Addl. Sessions Judge vide his judgment and order dated 31.8.1999.

Being aggrieved by the same, the applicant has preferred the present application.

5. The learned Addl. Sessions Judge has dismissed the Cri. Revision Application mainly on three grounds (i) sec.141 of Cr.P.Code would not be

attracted as the muddamal articles are not perishable, (ii) any of the parties before the trial Court may claim muddamal so it may result into

multiplicity of proceedings or may create complications pending trial or at the end of trial, and (iii) currency note numbers are not noted by Nazir of

the concerned court and, therefore, there will be question of identity of muddamal at the time of trial because it would not be possible for the

applicant to produce very same currency notes before the Court, if amount is called for at any stage of the trial.

6. Mr. Dave, learned counsel appearing for the applicant submits that the applicant is ready and willing to furnish bank guarantee in respect of cash

amount and personal bond of the amount equivalent to the price of golden ornaments, if the muddamal is handed over to the applicant. It is

submitted that trial may protract for several years and applicant would not be in a position to use precious golden ornaments on the days of

festivals or on the occasions of social celebrations. Today, Mr. Dave has produced one letter signed by Police Inspector, Gondal City which is

taken on record, wherein the applicant is asked to collect the muddamal lying in Gondal City Police Station recovered under the aforesaid Crime

after obtaining appropriate orders from the competent court. Police has already filed chargesheet in the Court of learned Addl. Chief Judicial

Magistrate, Gondal. I have gone through the orders passed by both the courts below, police papers etc. and I found that nowhere number of

currency notes are mentioned by the police at the time of recovery of muddamal currency notes. Only denominations are noted. The amount is in

Rs. 500/ and Rs. 100/ denomination respectively. The circumstances under which the suitcase of the complainant (present applicant) was lifted

from GSRTC Bus is explained by the applicant in her complaint itself. Respondent no.2 lady was caught with muddamal and it was clear even

before the learned Magistrate that the accused lady from whose custody the muddamal was recovered, had not claimed muddamal or any of the

articles recovered from the suitcase of the applicant. It is surprising to note that the application for recovery of muddamal from the custody pending

trial submitted on 8.5.1998 do bear positive report of the Investigating Agency. Respondent no.2 Sunita Raju (accused) and co-accused Kalu

Dasharath had put their endorsement to the effect that they have no objection if the muddamal recovered is handed over to the present applicant.

Endorsement made by the learned APP is contrary to the endorsement made by the accused persons. Though nobody had claimed muddamal

except the applicant, the learned APP appearing in the court of the learned Addl. Chief Judicial Magistrate, Gondal, for the reasons best known to

him, has made an endorsement to the effect that the accused persons are also claiming muddamal. It seems, prima facie, that that with a view to

create some complications, such an endorsement is made. However, it would not be proper to pass any serious remarks against the Ld. APP

because he is not called before this Court nor has been afforded any opportunity to explain under which circumstances, he has made endorsement.

But page-23 of the file clearly shows that finding of the learned Magistrate is not in accordance with the endorsement made on the application . I

agree that golden ornaments are not perishable articles, but they are precious and important and on festival days, they are of day to day use.

Custom in the society and tradition of the family to put on such ornaments ought to have been considered by both the courts below when there was

no other claimant of the very muddamal. This aspect is ignored by both the Courts below. Golden ornaments can be reproduced before the Court

and could have been released on imposing appropriate conditions while passing the order of release and handing over the same to the applicant.

7. So far as the identity of currency notes before the learned Magistrate is concerned, the reasoning given by both the courts below are contrary to

logic. There is no reference of numbers of each currency note nor reference of identification marks in the recovery panchanama. There is no

mention in the orders whether muddamal pavti bears such numbers. On the contrary, orders indicate that even Nazir has not noted down the

numbers of currency notes. So, question of identity would not arise and currency notes lying as muddamal can be replaced at any time or could

have been replaced by Investigating Agency prior to or while handing over muddamal before the Court. Even today, muddamal, according to the

letter of Police Inspector, Gondal City, is with Gondal Police. So, replacement of muddamal currency note was possible and is possible. So

reasons given by both the courts below for rejecting the application of the applicant to get muddamal pending trial are not just and proper. After

certain queries raised to the learned APP Mr. Mankad, learned APP Mr. Mankad has fairly submitted that muddamal could have been handed

over to the applicant pending trial by imposing stringent conditions and still the same can be handed over to the applicant. An amount of

Rs.40,000/ is not a small amount for a middle class family and surely would be of help in case of any emergency. Provisions of Sec. 451 of

Cr.P.Code should have considered and interpreted in light of the special facts and circumstances of the case and not on technicalities and as per

the plain disctionary meaning of the word engrafted in the section. e.g. A very valuable book of a medical or engineering student is stolen from

hostel room and on the complaint the same is recovered from another student and if in recovery panchanama and muddamal Pavti no specific

description is given as to the book and learned Magistrate rejects an application under Sec.451 of Cr.P.Code as to muddamal book by giving a

reason that the book is well-bound, printed on valuable papers and is not a perishable article and, therefore, cannot be returned to the complainant

student pending trial, would such an order can be an order in accordance with law and doing justice ? In nut-shell, delivery of substantial justice

should be in centre while adjudicating disputes between the parties or while interpreting the provisions of law.

8. In view of peculiar facts and circumstances of the facts and without going into the merits of the petitioner, this Cri. Revision Application is

allowed. The impugned orders passed by both the courts below are hereby quashed and set aside and the Police Inspector, Gondal City, Gondal

is directed to handover muddamal golden ornaments and cash amount of Rs. 40,000/ (Rs. forty thousand only) to the applicant pending trial on the

following terms and conditions :-

(1) The applicant shall execute personal bond with one surety of the amount equivalent to the price of Golden Ornaments as a security as reflected

in recovery panchanama.

(2) The applicant shall furnish a Bank Guarantee of Rs. 40,000/ (Rs. forty thousand only) against the muddamal cash amount of Rs. 40,000/.

(3) The applicant shall file an undertaking before the learned Addl. Chief Judicial Magistrate, Gondal to the effect that she will furnish Personal

Bond as well as Bank Guarantee of the amounts referred above in condition no. (2) within one week from the date of receipt of muddamal.

(4) Shall produce the said muddamal before the Court concerned as and when called for to do so. However, in respect of muddamal cash amount

of Rs.40,000/ for which a Bank Guarantee of Rs. 40,000/ is to be furnished, it would be open to the Court concerned to realise the Bank

Guarantee in case muddamal amount is required to be recovered back at the conclusion of trial.

(5) The above conditions are over and above the usual conditions which are to be observed by the applicant.

9. Writ to be sent to Police Inspector, Gondal City, Gondal as well as learned Addl. Chief Judicial Magistrate, Gondal forthwith.

10. Rule is made absolute to the aforesaid extent.