(1993) 03 GUJ CK 0046

Gujarat High Court

Case No: None

State of Gujarat		APPELLANT
	Vs	
Kirit Maganbhai Patel		RESPONDENT

Date of Decision: March 4, 1993

Acts Referred:

- Essential Commodities Act, 1955 - Section 3, 7

Citation: (1993) 1 GLR 674

Hon'ble Judges: K.J. Vaidya, J

Bench: Single Bench

Judgement

K.J. Vaidya, J.

This appeal by the State of Gujarat is directed against the impugned judgment and order, dated 19-1-1985, rendered in Criminal Case No. 8 of 1985, by the learned Chief Judicial Magistrate, Nadiad, wherein the respondent-Kiritbhai Maganbhai Patel, who came to be tried for the alleged offence punishable under Sections 3 and 7 of the Essential Commodities Act, 1955 for the contravention of Clause 25 of the Gujarat Petroleum Products (Licence, Control & Stock Declaration) Regulations was at the end of trial ordered to be acquitted on the short ground that despite several opportunities given to the prosecution, it failed to keep witnesses present and examine them before the Court.

2. To state few relevant facts of the prosecution case, as are succinctly reflected in Charge (Exh. 4), on 9-4-1980 at 13-00 hours, the complainant on tip-off raided the shop running in the name and style of ''M. S. Patel Kerosene Depot'', situated at Chokdi of Village Alindra of the ownership of one Kiritbhai Maganbhai Patel and seized therefrom 3000 liters of diesel oil valued at Rs. 4,860/- for which the owner had no licence and 2069 liters of kerosene valued at Rs. 3,020-74 without the same being accounted in the Stock Register maintained for the purpose. On the basis of these facts, after the complaint came to be filed against the respondent for the aforesaid alleged offences and after the investigation was over, the respondent was

charge-sheeted to stand trial before the learned Chief Judicial Magistrate, Nadiad.

3. From the Rojkam proceedings, it appears that the charge-sheet against the respondent was filed on 21-10-1980 and that on the basis of the same, after the case came to be registered as Criminal Case No. 852 of 1980, summons were issued to the respondent making it returnable on 23-10-1980. On 23-10-1980, the respondent appeared before the Court and thereafter for one reason or the other, the matter went on being adjourned from time to time upto 20-8-1981 and then to 24-9-1981. It also further appears that during this period the respondent remained absent on several occasions and therefore, learned Magistrate was constrained to issue non-bailable warrant against him. Quite surprisingly enough, it further appears that there is yet one another separate Rojkam proceedings appearing on the record of this very case, which is subsequently numbered as Criminal Case No. 8 of 1984, starting from 20-3-1984 !! There also we find that the matter went on being adjourned from time to time on several occasions. Here also, on 18-6-1984, as the respondent remained absent, non-bailable warrant was issued against him, making it returnable on 25-6-1984. On that day, the respondent remained present, and therefore, Charge (Exh. 4) was framed against him. On his plea being recorded, he pleaded not guilty to the charge, and thereafter, the case was adjourned to 2-7-1984 for recording evidence of the prosecuting witnesses. On 2-7-1984, as Shri Ravishankar Maharaj had expired, the case was once again further adjourned to 7-7-1984 for recording the evidence. Thereafter, the case went on being adjourned for about 23 times for recording the evidence and ultimately on 19-1-1985, as stated above, the respondent came to be acquitted on the ground of prosecution failing to examine its witnesses despite several opportunities given to it.

4. At this stage, it is interesting to note that in between the period 20-8-1981 till 20-3-1984 for about 31 months, there is no reference whatsoever by way of any Rojkam proceedings as to how the matter was proceeded with ! ! It clearly appears that during this period, the case could not be taken up most probably as the paper.; disappeared somewhere ! ! It is difficult to understand as to why a separate criminal case number came to be given to the very same case ? There is indeed nothing on the record to explain away this dismal and shocking situation ! ! Not only that but after the case papers were traced out while giving fresh Criminal Case No. 8 of 1984 in place of Criminal Case No. 852 of 1980, there is nothing on the record as to indicate by way of some note as to where the papers were in between the period and why it came to be numbered afresh. This is indeed something very extraordinary and quite serious too, and accordingly, the learned District & Sessions Judge, Kaira at Nadiad is hereby directed to immediately conduct an indepth inquiry into the matter and submit his report to this Court on or before 29th April, 1993 calling for the explanation of the concerned learned Magistrate(s), Bench Clerk(s) and any other Clerk(s) who are accountable for this serious lapse during this period. Not only that but in such type of cases, it would also be equally desirable in overall public-interest, if the Secretary, Home Department and the Secretary, Legal

Department, Gandhinagar undertake to hold separate inquiry at the earliest and call for the explanation of the concerned P.P.(s) as well as the Complainant and the Investigating Officer incharge of the matter regarding this unpardonable lapse and remissness on their part, in not pursuing the matter by inquiring from the learned Magistrate(s) as to why the trial was not proceeded with, and thereafter when the case appeared on Board, why Police witnesses did not remain present for being examined despite case adjourned for the said purpose on number of occasions. If such an inquiry reveals any lapse either on the part of the learned P. P. or concerned Process Serving Agency or police witnesses, appropriate action deserves to be taken against the delinquent officer-, in order to serve as an object lesson to such public servants in future. It may be pointed out that the explanation of learned P.P., the Complainant and the Investigating Officer is absolutely necessary for the simple reason that they cannot be permitted to shirk their ultimate responsibility in conducting criminal case entrusted to them, by taking refuge under the lame excuse that what could they do when the case was already before the Court ! ! If for whatever reason in between period, the instant case could not be taken up, it was certainly the duty of learned P.P. as well as the Investigating Officer to draw attention of the learned Magistrate regarding the same and request that the case be immediately placed on the Board and the trial be proceeded with and disposed off on merits according to law. How indeed the learned P.P. incharge of the case could have remained silent for as many as 31 months when the case could not be proceeded for whatever reasons ? Further still, why and how indeed the Police Officers who were witnesses in this case did not appear before the Court to give the evidence ? Why and how indeed the Process Serving Agency played foul in not discharging its duty in serving the summons on rest of the witnesses ? All these persons are undoubtedly answerable in this case. One should not surely be surprised, if indeed some one alleges that such patent negligence on the part of prosecuting agency in not taking quite deserving care, indirectly amounts to abating the offender who is interested in keeping safe distance from the Court without being tried and thereby delaying the trial getting all the benefits of unduly protracted trials, either because the witnesses are not available owing to their death or migration and/or change in their addresses or their memory fails to give correct account before the Court, after lapse of time, and thereby successfully defeat the ultimate justice. If the State authorities will fail to take stricter view of the matter in hand, believe it, things will go totally out of control to the greatest disadvantage of the cause, people and social justice !

5. The matter does not and simply cannot rest here, as neither the Rojkam proceedings nor the case record indicate as to whether in fact the summons, failing which the warrants were issued by the learned Magistrate to secure the presence of the witnesses ! Of course, it appears from the application dated 18-1-1985 (Exh. 9) given by the learned P.P. incharge of the matter seeking adjournment on the ground that summons on the complainant and Panchas have not been served, and

therefore, some more time be given to him, however, there is nothing on the record to show that intact any summons were issued or not ! ! It is really unfortunate that even the Rojkam proceedings in this case are not maintained as per the directions given in the High Court Criminal Manual, which has been duly re-emphasised and highlighted by this Court in a decision rendered in the case of State of Gujarat v. Lalit Mohan reported in 1989 (2) GLR 952 ! ! Taking into consideration the total remissness on the part of some of the learned Magistrates in not maintaining the copy-book Rojkam proceedings, the learned District & Sessions Judges of the State would indeed do well if they are specifically directed to give their special attention to this part and see that subordinate Magistrates religiously observe the directions given in the High Court Criminal Manual, as further duly emphasized by this Court in case of State of Gujarat v. Lalit Mohan (supra).

6. Thus, having regard to the facts and circumstances of the instant case, this Court is firmly of the opinion that learned Magistrate should not have treated the instant case lightly by saying that "despite several opportunities given to the prosecution, it has failed to examine the witnesses, and therefore, accused deserves to be acquitted" - as the offences alleged against the respondent fall within the ambit of Essential Commodities Act [a social beneficial piece of the legislation] for illegal possession of Diesel Oil and Kerosene, which very much affects the day to day interest of the common man in the Society. If for xx xx xx whatever reasons, the Investigating Agency failed to keep witnesses present before the Court, or for that purpose even the learned P.P. did not evidence expected and desirable interest in pursuing the matter, taking up the issue with the concerned D.S.P., the learned Magistrate was certainly not the least not duty-bound to do the needful of his part to coerce and secure presence of the witnesses to examine them with the legitimate weapon of warrant at his hand, including the non-bailable warrant, if need so arises, and as observed in case of State of Gujarat v. Lalit Mohan (supra). The learned Magistrate ought to have realised that once the charge was framed, the case was required to be decided on merits and the alleged anti-socials, such as the respondent committing the cool-blooded calculated crime against the society cannot be permitted to go scot free without any trial. If at the end of trial, for want of evidence on merits, the respondent deserves acquittal, the same has to be given but nonetheless, none can be permitted to abort the cause of justice by polytricking with the course of justice and law by disowning and shifting the responsibility, conveniently placing the same on the shoulder of somebody except one-self ! These days unfortunately we are coming across number of such cases wherein the accused persons get out of the clutches of law and thereby successfully defeat the justice because of the dismal complicency and shifting of the responsibility one after another either on the part of Investigating Agency or the Process Serving Agency or the learned P.P. and thereafter, last but not the least, by the learned Magistrate taking shelter behind the lams excuses put forward by paralytic limbs of the aforesaid three agencies, saying as if that if they fail to discharge their duty, why

should the Court bother to do anything ? It appears that sometimes there is not that common thread or throbe of the sense of duty to the society and ultimate responsibility going through the Investigating Officers, Process Serving Agency, learned P.P.S and the Court tieing-up all of them together in one, making a "garland of duty" to be offered to the Godess of Justice !

7. This malignant dishonest device of "shifting of responsibility" in public servants these clays have been found to be gradually increasing and has become, so to say, a chronic disease sucking the vitals of the public interest ! Why cases after cases are found failing ? Where indeed lies the fault ? How to repair the said failure for the better result-oriented prosecution and the trials ? What steps indeed are needed to be taken to better secure the elimination of such failures ? These are some of the burning problems which require urgent attention of all the concerned for the simple reason that how long shall we treat this nagging problem casually and lightly ? How long shall we continue hood-winking at this and continue deceiving ourselves by just sleeping over the problems which require immediate attention despite sometimes our knowledge as to how, where, why, what for and finally at whose instance, the whole system has started failing ? Be it the Process Serving Agency, P.P., Police, Court, or for that purpose any other public servant, all are unquestionably public servants and owe unstinted duty to the society, but once again where is that sense and spirit of public service ? As regards the public opinion, it is jokingly observed that the same is neither public nor opinion and similarly do we want another joke to be coined out and added to say that public servants have neither anything to do with the public nor to do with the service of the society. This pathetic and exasperating situation prevailing in the society is quite shocking, thought provoking and an Eye-opener which quite incidentally brings to the mind of this Court, a small anecdote which under the caption "That''s Not My Job" reads as under:
This is a story about four people named Everybody, Somebody, Anybody and Nobody. There was an important job to be done and everybody was sure that somebody would do it Anybody could have done it, but nobody did it. Somebody got angry because it was everybody''s job. Everybody thought anybody could do it, but nobody realised that everybody wouldn''t do it. it ended up that everybody blamed somebody when nobody did what anybody could have ! !

This anecdote incidentally holds out a mirror reflecting the present day ugly face of some of the public servants who just take delight in distasteful diplomacy of shirking and shifting of responsibility at the cost of their own " moral and judicial conscience, legal values and at the cost of overall social interest. This anecdote, accordingly, must constantly remind all involved in the process of Administration of Justice that inadvertently even they do not ignobly fit-in in any of the categories of irresponsible ones, enlisted in the aforesaid anecdote - and take further care to steer clear of the said obstacles, by religiously performing the public duty entrusted to them rather then passing it of to somebody else''s shoulders. In this view of the matter, the

above anecdote must be constantly alive to the mind of every Investigating Officer, Process Serving Agency, learned Public Prosecutors, Criminal Courts, and for that purpose every public servant learning life''s lessons from it of not to avoid and shift the responsibility.

8. In this case, the Court acquitted the respondent on the sole ground that the prosecution did not keep witnesses present. Is this not something like saying that - "That''s not by job" ? Is this not something like shifting of one''s responsibility ? Could not the learned Magistrate have issued warrant to secure presence of the witnesses before the Court ? All these things could, should and ought to have been done by the learned Magistrate and yet the learned Magistrate conveniently pretending that the prosecution has failed to keep witnesses present before the Court, and thereby, acquitted the accused without realising what was its ultimate duty ! Not for a moment this Court wants to say that in each and every case, irrespective of the gravity and seriousness of offence, the learned Magistrate should mechanically issue summons and/or warrants to the witnesses to secure their presence ! No that can''t be. As a matter of fact, in some trivial offences of abuses, threats, assaults, superficial injuries, or in some palpably false defamation cases where after filing the complaint, the case lingers on and on, as a result of some unscrupulous complainant remaining deliberately absent only with a view to protract the proceedings and thereby physically, mentally and financially harass, annoy and demoralize the accused and gradually backs out from his appearance, in such cases, the Court can and must nodoubt of its own discharge and/or acquit the accused ! But then, that is indeed quite a different thing altogether. In fact, the Court in the first instance must clearly understand the basic difference between the "trivial cases" and deliberate protraction of trials by some unscrupulous complaints and the "grave & serious cases of public and the social interest and importance". In the second instance, once the charge is framed and plea of the accused is recorded, the learned Magistrate cannot dispose of the case without deciding the same on merits. In a given Case, the witnesses may be ready to come before the Court to give evidence before the Court but for whatever reasons because of the communication gap, they do not know as to on what date they have to appear before the Court to give evidence and therefore they just fail to appear. Further, it is none to secret that in a given case, the process serving agency, dishonestly for whatever reasons do not serve the summons or warrants on witnesses/accused etc. In cases, suppose even after the service of the summons and/or warrants, the witnesses do not appear before the Court, there also the Court is duty-bound to examine them in order to see that the inconvenience and harassment inflicted by the offender on the society is set right by having a full-dress trial after examining the witnesses. All aforesaid factors must be alive to the mind of the learned Magistrate who accordingly has a definite role to play -a role of a Trustee as the custodian of interest of the people. Unless the learned Magistrate and for that purpose, any other public servant, understands this basic philosophy of public

service to the society and accordingly discharges and activates himself with the much needed zeal and activism in support of the same, mare passing of some legislations, existence of the Courts and the Administration of Justice, highly paid executives to enforce the Law, etc. are not going to yield any fruitful result, rather in absence of the sense of social service, all of them are going to be absolutely undesirable deadweight on the society, surviving as parasite only at the cost of the society on the basis of money in the coffers of the public Exchequer filled in by squeezing the same from the blood, toil, tears and sweat of honest taxpayers ! This Court does not know whether the heart-burn over social sufferings reflected on the pages of this judgment will turn the above situation for better immediately. It is hoped that the social reformist and the Legislature will surely take note of this in order to think afresh and take initiative in setting things right by evolving some workable formula whereby whenever the public servant is found to be lethargic or derelict in discharge of the public duty, he is brought to the senses not only by way of some departmental proceedings but even criminal prosecution can be launched against him !! Unless there is some formidable sanction of fear and law and the honest authority administering such laws, it is not possible to control this pathetic fast-spreading apathy of the public servants in the day today running of administration. Believe this Court that if things are not done in the manner suggested above in the right earnest, at the earliest, and the dereliction of duty on the part of public servants is allowed to persists uninterruptedly and the same is taken quite casually and lightly, it is indeed not impossible to fortell the bleak and dark future for the people of this country. The administrative apathy in enforcing the sense of discipline and duty can turn out to be an unwritten invitation and motivation for terrorism and anarchy ! This shifting of responsibility is the root cause of national ailments -be it social, economical, political, legal or moral.

9. What boils down from the above discussion is ultimately the fact that time has quite ripened when every Court will have to positively understand its part of paramount duty to the Society, and the much needed judicial activism in support of the same. This Court is of the definite opinion that to take shelter behind some lame excuses like "despite several opportunities given to the prosecution, it failed to examine the witnesses, and therefore, accused deserves to be acquitted" is simply not discharging the duty in a given case like the instant one. Not only the learned Magistrate, but even the learned P.Ps. incharge of the cases are bound to know that once the charge is framed for such important offences against the society, they just cannot rest contended merely by saying that the process is not served. In fact, if the process is not served on witnesses, both the learned Magistrate and P.P. should activate themselves and with the active assistance of the D.S.P. should do the needful to see that the witnesses remain present and are examined. As further still, so far as the learned Magistrate is concerned, on his part, he should issue warrants and if need be, even the non-bailable warrants too, to secure presence of the witnesses in order that justice is brought home and the offenders pastering the

society are brought to the book. If the P.P. believes that his duty and function is limited one, that is to say it starts from framing of charge then with examination, cross-examination of the witnesses, declaring the witnesses hostile if so needed, and then to argue the case, he is simply labouring under some wrong notions of the duty. Once the P.P. is put incharge of the criminal case, it is his foremost duty to see that witnesses are kept present before the Court on the date fixed for the purpose. For this purpose, he must assert his authority to control I. 0. and the process serving agency and if for any reasons they do not assist him and pay any heed, the matter should at once be reported to D.S.P. and D.M. concerned for doing the needful. But under no circumstances, he should surrender his top-most sense of duty to the disobedient I. O. or Process Serving Agency. If the P.P. fails to control I. 0. and the Process Serving Agency and do not make attempts to secure presence of witnesses for examination purpose through the instrumentality of D.S.P. and as a result the accused is either discharged or acquitted he stands to account for the same ! Discharging the public duty by a public servant is not a piecemeal, part-time, sub-contract of doing only the assigned part of the work ! Once the offence is committed, investigation starts, charge-sheet filed, P.P. entrusted with case begins trial, witnesses summoned, and after examination trial ends and the case goes further in appeal before the higher Court, all involved in the process are responsible and accountable to the society till the case is ultimately logically terminated and set at rest. Discharging the public duty is something very holy and sacred and the public servants cannot permit themselves to be mere passive spectators sitting either on the fence or easy in recline chair, as if enjoying some fun "Tamasha" wherein the public interest and justice is molested and outraged on account of not performing the duty. This is nothing but a mockery of justice right before the Court. It appears that the criminal case is made of various component'', viz.,, I. O., Process Serving Agency, learned P.P. and the Court. It also further appears that each of these components ordinarily expects other to act and do needful and itself remains quite complacent. It is the duty of the Court to see that all the components, including itself are in total alignment and harmony and work for common goal to reach the justice to the people.

10. On going through the impugned judgment it undoubtedly appears that the learned Magistrate has taken the instant case quite lightly, without feeling any heart-burning whatsoever for the society in such a serious offence under the Essential Commodities Act by disposing it of the same on the sole ground that despite several opportunities given to the prosecution, the witnesses were not present, without making any effort on his part to secure their presence ! There arc cases and cases and the instant case is the one such case wherein the learned Magistrate should have rose to the occasion and secured the presence of the witnesses for deciding the case on merit, instead of taking an easy shelter behind the pretext that "despite the opportunities given to the prosecution, the witnesses are not kept present".

11. This Court is quite conscious of the fact that the offence alleged against the respondent is of the year 1980 and that as many as 12 long years have passed in between thereafter. But then, if on this ground alone the nausiating chronic and intolerable apathy on the part of Police, Witnesses, Process Serving Agency, the learned P.P., and last but not the least, the learned Magistrate is to be casually and lightly countenanced by this Court, I am afraid ''justice can never be brought home''! In this view of the matter, there is no alternative left for this Court but to remand the matter to the trial Court to dispose of the same on merits, according to law.

12. On perusal of the charge-sheet it appears that there were in all 10 prosecution witnesses to be examined. Out of these, three are Police personnel, namely : (i) Armed Constable Dahoodbhai Shanabhai, B. No. 1461, Nadiad Town Police Station, (ii) Police Constable Mr. Mathurbhai Bhaijibhai B. No. 903, Nadiad Town Police Station, and (iii) Investigating Officer Mr. K. D. Yadav. P.S.I. Nadiad Town Police Station and six other witnesses are patch-witnesses and one from the Office of the Director, Forensic Science Laboratory. It is hoped that all concerned would see to it that this time the cause of justice is not given an easy slip and made to suffer on account of lapse of public duty by shifting responsibility, as has been done earlier in the instant case ! ! At the cost of repetition, it may once again be stated that one cannot be oblivious to one''s own call of public duty, so as to indirectly oblige the accused from letting him off of the hook of "law and justice".

In the result, this appeal is allowed. The matter is remanded to the trial Court to be disposed of on merits according to law, in the light of the directions given above. The learned A.P.P. Mr. Bukhari is directed to inform the learned P.P. incharge of the case to appear before the learned Magistrate on 1-4-1993 to do the needful for initiating the trial. Office registry is directed to forward the copy of this judgment immediately to the learned Sessions Judge, Kaira at Nadiad.