



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/CRIMINAL REVISION APPLICATION (AGAINST ORDER PASSED BY
SUBORDINATE COURT) NO. 842 of 2004**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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DHARMESHBHAI VINUBHAI PATEL

Versus

STATE OF GUJARAT & ORS.

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Appearance:

MR TEJAS BAROT, SR. ADVOCATE WITH MS RHEA CHOKSHI FOR MR MC BAROT(144) for the Applicant(s) No. 1

MR IH SYED(2321) for the Respondent(s) No. 2,5,6

MR MA BUKHARI(211) for the Respondent(s) No. 2,5,6

MR RAXIT J DHOLAKIA(3709) for the Respondent(s) No. 3,4

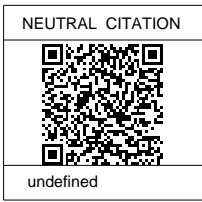
MR HK PATEL, APP for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE J. C. DOSHI

Date : 08/05/2024

ORAL JUDGMENT

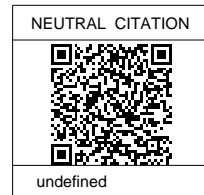


1. De-facto complainant, by way of present Revision Application filed under section 397 read with section 401 of Cr.P.C., assails judgment and order dated 08.10.2004 passed in Sessions Case No.208 of 2002, where-under learned Sessions Judge, Nadiad acquitted the respondents - accused from the offence of sections 307 and 120B of IPC, section 25 of Arms Act and section 135 of Bombay Police Act.

2. Facts which can be gathered from the record reads as under :-

2.1. Complainant and victim were used to go for morning walk. It is further case of the prosecution that victim on many occasion told complainant that he is receiving threat on phone. It is further case of the prosecution that on 29.04.2002 at about 6.00 am, the complainant and victim Rajanbhai had gone for morning walk and when they were near Honest Bungalows, at that time, three persons came on scooter and pointed revolver to Rajanbhai and at that time, he opened firing on victim - Rajanbhai. Thus, complaint at the instance of the complainant came to be registered against the respondents accused for the aforesaid offences.

3. In pursuance of the complaint lodged by the complainant with the Naidad Police Station for the aforesaid offences, the investigating agency started usual investigation and recorded statements of the witnesses, drawn various Panchnamas and obtained FSL report for the purpose of proving the offence. After



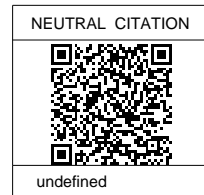
having found sufficient material against the respondents accused, charge-sheet came to be filed in the Court of learned CJM, Nadiad. Since trial of offence alleged against accused is triable exclusively, before Court of Sessions, learned CJM had committed offence to Sessions Court, Nadiad as provided in section 209 of the Code.

4. Upon committal of the case to the Sessions Court, Nadiad, learned Sessions Judge framed charge at Exh.11 against the respondents accused for the aforesaid offences. The respondents accused pleaded not guilty and claimed to be tried.

5. In order to bring home charge, the prosecution has examined as many as 19 witnesses and also produced 13 documentary evidence before the learned Sessions Court.

6. On conclusion of evidence on the part of the prosecution, the Sessions Court put various incriminating circumstances appearing in the evidence to the respondents accused so as to obtain explanation/answer as provided u/s 313 of the Code. In the further statement, the respondents accused denied all incriminating circumstances appearing against them as false and further stated that they are innocent and false case has been filed against them.

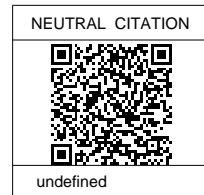
7. After hearing both the sides and after analysis of the evidence adduced by the prosecution before the learned Trial Court, the respondents accused were acquitted from the charge of offence as aforesaid. Hence, present Revision Application is filed by the complainant.



8. Heard learned Senior Advocate Mr. Tejas Barot assisted by learned advocate Ms. Rhea Chokshi for the petitioner - complainant, learned APP Mr. H.K. Patel for the respondent - State and learned advocate Mr. Pravin Gondaliya for the respondents - accused.

9. Learned Senior Advocate Mr. Tejas Barot for the petitioner - complainant would submit that learned Trial Court has committed serious error in acquitting the respondents - accused for the offence under sections 307 and 120B of IPC, section 25 of Arms Act. He would submit that deposition of de-pacto complainant and injured witness examined as PW-1 and PW-5 at Exh.25 and Exh.33 have been wrongly interpreted by the learned Trial Court. Both of them have deposed before the Court how incident of firing had taken place and accused had intention to murder PW-5. It is submitted that though recovery panchanama drawn under section 27 of the Evidence Act supported the case of the prosecution, but the learned Trial Court for technical consideration found some irrelevant contradiction in deposition of PW-1, PW-5, PW-8 and PW-9. It is submitted that incident took place after Godhra carnage took place. PW-5 was politician and was under threat and accused have decided to do away with PW-5 and have opened one fire, fortunately, when PW-1 and PW-5 were walking in morning, bullet which was fired from country made pistol did not hit PW-5 but it was an attempt to murder him and it was established from deposition.

9.1. Learned Senior Advocate Mr. Borot for the petitioner further submitted that learned Trial Court has committed serious error in not believing case of the prosecution. It is submitted that



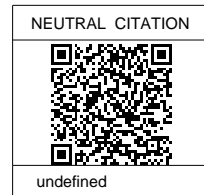
panchanama as well as report from FSL indicates that country made pistol was used by the accused, which indicates offence under section 25(C) of the Arms Act but the learned Sessions Judge has not even discussed about recovery of country made pistol and in that regard offence under section 25(C) of the Arms Act entail impugned judgment vulnerable. It is further submitted that in view of deposition of PW-8 and PW-9, it was established that conspiracy was hatched by the accused to murder PW-5. It is submitted that offence being significance as it took place on edges of Godhra carnage and manifestly it is ignored by learned Sessions Judge while acquitting the accused from the charge of offence under sections 307 and 120B of IPC and section 25 of Arms Act.

9.2. Upon above submissions, it is submitted to allow present Revision Application.

10. On the other hand, learned APP in fair submission submitted that State being premier prosecuting agency did not elect to challenge finding and reasons arrived in Sessions Case No.208 of 2002 and submitted to pass necessary order.

11. Learned advocate Mr.Pravin Gondaliya for the accused submitted that impugned judgment and order is just and proper. He would submit that learned Sessions Court has rightly acquitted the accused / respondents, after appreciating the evidence on record.

11.1. Upon above submissions, he submitted to dismiss the Revision Application.



12. Having heard learned advocates for the parties, let refer section 397 and section 401 of Cr.P.C. so as to understand ambit and scope of interference.

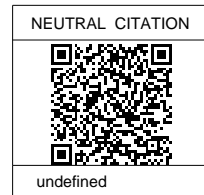
"397. Calling for records to exercise powers of revision.

(1)The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation. - All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of Section 398.

(2)The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3)If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.



401. High Court's powers of revision.

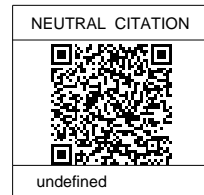
[\(1\)](#)In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by Sections 386, 389, 390 and 391 or on a Court of Session by Section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by Section 392.

[\(2\)](#)No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

[\(3\)](#)Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.

[\(4\)](#)Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

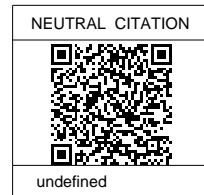
[\(5\)](#)Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same



accordingly."

13. What could be noticed from the language of statute is that revisional power is limited only to examine record of Trial Court for the purpose of satisfying as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed. Section 401(3) of Cr.P.C. specifically bars Court to convert a finding of acquittal into one of conviction.

14. The very object of conferring revisional jurisdiction upon the superior criminal courts is to correct miscarriage of justice arising from misconception of laws or irregularity of procedure. Apt to note that discretion in exercise of revisional jurisdiction should be exercised within four corners of section 397 read with section 401 of Cr.P.C. whenever there has been miscarriage of justice in any manner whatsoever. The revisional jurisdiction should not be lightly exercised as it cannot be invoked as of right. "For the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceeding of such inferior court", for this purpose, if High Court or the Sessions Court find necessary and expedient, it can exercise power. Normally, Revisional Court does not dwell at length upon the facts and evidence of the case. The Court, chair in revisional jurisdiction can consider material only to satisfy itself about the correctness, legality and propriety of the findings, sentence or order and refrain from substituting its own conclusion on an elaborate consideration of evidence.



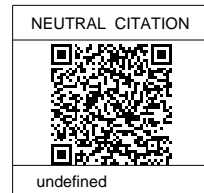
15. In the **State of Maharashtra v/s. Jagmohan Singh [(2004) 7 SCC 659]**, the Hon'ble Apex Court has held that High Court in exercise of its revisional jurisdiction cannot embark upon in-depth re-examination of the oral and medical evidence and come to the conclusion contrary to the consistent one reached by the two courts below.

16. In **Bharwada Bhoginbhai v/s. State of Gujarat [AIR 1983 SC 753]**, the Hon'ble Apex Court has observed that discrepancies which do not go to the root of the matter and shake the basic version of the witnesses, cannot be annexed with undue importance. More so, when all important "probabilities-factors" echoes in favour of the version narrated by the witnesses.

17. It is to be noted that in the present case, the State has not filed any acquittal appeal challenging the impugned order. The complainant has filed present Revision application upon police report. In exceptional cases revisional jurisdiction may be exercised by the High Court on revision application filed by private party in a case instituted on police report. [see : **K. Chinnaswamy Reddy v/s. State (AIR 1962 SC 1788)**].

18. In **Khetra Basi v/s. State of Orissa [AIR 1970 SC 272]**, Hon'ble Apex Court while placing reliance on earlier decision in the case of **D.Stephens v/s. Nosibolla [AIR 1951 SC 196]** observed as under :-

"the revisional jurisdiction conferred on the High Court under the Code is not to be lightly exercised, when it is invoked by a private complainant against an order of acquittal, against which the government has right of



appeal. It could be exercised only in exceptional cases where the interest of public justice require interference for the correction of a manifest illegality or the prevention of gross miscarriage of justice. This jurisdiction is not ordinarily invoked or used merely because the lower court has taken a wrong view of the law or mis-appreciated the evidence on record. The High Court in its revisional power does not ordinarily interfere with judgments of acquittal unless there has been manifest error of law or procedure."

19. I may also refer to judgment of Hon'ble Apex Court in the case of **Sheetala Prasad v/s. Sri Kant [(2010) 2 SCC 190]**, wherein, Hon'ble Apex Court held that private complainant can file a revision application in certain circumstances, including when trial court wrongly shuts out evidence which the prosecution wishes to produce. Noting principles of revisional jurisdiction at the instance of private complainant, it is observed by Hon'ble Apex Court as under :-

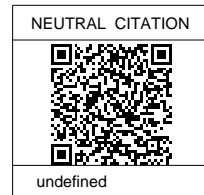
"12. The High Court was exercising the revisional jurisdiction at the instance of a private complainant and, therefore, it is necessary to notice the principles on which such revisional jurisdiction can be exercised. Sub-Section (3) of [Section 401](#) of Code of Criminal Procedure prohibits conversion of a finding of acquittal into one of conviction. Without making the categories exhaustive, revisional jurisdiction can be exercised by the High Court at the instance of private complainant

(1) where the trial court has wrongly shut out evidence which the prosecution wished to produce,

(2) where the admissible evidence is wrongly brushed aside as inadmissible,

(3) where the trial court has no jurisdiction to try the case and has still acquitted the accused,

(4) where the material evidence has been overlooked either by the trial court or the appellate court or the order is passed by considering irrelevant evidence and (5) where



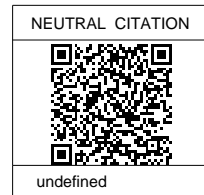
the acquittal is based on the compounding of the offence which is invalid under the law."

20. Thus, order of acquittal when invoked, in revision by a private complainant, the jurisdiction cannot be exercised lightly and that it can be exercised only in exceptional cases where the interest of public justice require interference for correction of manifest illegality or the prevention of gross miscarriage of justice.

21. In background of above principle, we will now examine present case as to find out any irregularity or illegality has been recorded by the learned Sessions Judge which turn into gross miscarriage of justice while acquitting the accused.

22. Though re-analysis of the evidence is not permissible, in exercise of revisional jurisdiction, for the limited purpose to find out where there exists any patent illegality in appreciating evidence or application of procedure of law, let creep through impugned judgment.

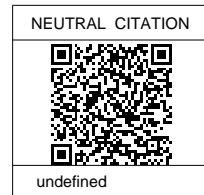
23. It is the case of prosecution that on 29.04.2002, PW-1 and PW-5 were on morning walk, at that time, accused came from Honest Bungalows on scooter and that scooter was parked 50 feet away from the petitioners. Person sitting on last, took out country made pistol from his waist with a intention to kill PW-5. At that time, PW-5 started shouting. PW-1 jumped upon assailant and fell him down. Assailant fired from his country made pistol while he fell down. Then all the accused ran away and assailant had thrown another country made pistol on road.



This is short and substance of prosecution case.

24. In these circumstances, on going through page 9 and 10 of the impugned judgment, in deposition of PW-1 and PW-5, learned Sessions Judge found total discrepancy. Complainant - PW-1 has deposed that person sitting third in scooter has opened fire and then he had thrown country made pistol on road. He has also deposed that assailant came with two pistols, one he has kept in belt and another he has thrown on road, but he has deposed that fire was made from pistol which was kept in belt. FSL report indicates that pistol found from road was stuck with bullet inside and fire took place from that country made pistol and it was broke opened. Learned Sessions Judge also noted that witnesses have not deposed and disclosed about scooter's number, colour of scooter. Remand application noted that accused came on motorcycle. Investigating Officer has not collected shirt of PW-1 and PW-5, nor he has collected clothes of accused. There are different instances of variation and disparity.

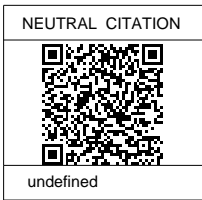
25. Learned Sessions Judge has also noted discrepancy on page 13 of the impugned judgment about two country made pistol. PW-1 has stated that after opening of fire, accused has put his country made pistol in his belt and another country made pistol was thrown on road, same is also stated in FIR - Exh.26. So there is variance which goes to the root of the matter. It is admitted fact that victim - Rajanbhai fell on road but prosecution has failed to establish how he fell on road and how firing took place and this suspicion is noted by the learned Sessions Judge. Learned Sessions Judge also noted suspicion in the deposition of complainant and victim.



26. Country made pistol is recovered, but same is not send to FSL. Stark suspicion has been recorded in deposition of PW-1 and PW-5 who are important witnesses and they are witness to the incident and they have not deposed similar facts and therefore learned Sessions Judge disbelieved case of the prosecution.

27. So far as allegation of conspiracy is concerned, there are two witness - PW- 8 - Manojkumar Tulsiyani and PW-9 - Umarbhai Vora. They have deposed that they were knowing about hatching of conspiracy since long back but they did not inform police and this led learned Sessions Judge to disbelieve their deposition. PW-8 and PW-9 were knowing assailant even before incident took place. Even some discrepancy is noted by learned Sessions Judge on medical evidence at Exh.52 and Exh.53.

28. Complainant - PW-1 and PW-5 who are witness to the incident, they were knowing assailant prior to TI parade, yet in TI parade again they have been identified. It raises doubt, firstly according to Investigating Officer during TI parade he did not remain present but as per deposition of complainant, Investigating Officer remained present during TI parade. Complainant was informed even before TI parade took place, that all the accused are involved in the offence. This is pre-disclosure by State and IT Parade becomes redundant. It is admitted that during TI parade, Investigating Officer has disclosed evidence qua colour and skin of accused, height, face and age of accused and state that he has not arraigned them in equal to the accused. All these aspects led learned Sessions Judge to



disbelieve case of the prosecution.

29. In nutshell, going through impugned judgment along with Record and Proceedings of Sessions Case, it does not indicate that learned Sessions Judge has committed any illegality in reaching to conclusion of acquitting the accused. De-facto complainant, has failed to establish exceptional case to believe that there is miscarriage of justice as well as public interest. Complainant has failed to prove his case within four corners by which revisional jurisdiction can be exercised by High Court.

30. For the foregoing reasons, since learned Sessions Judge has not committed any error much less error of understanding law. Present Revision Application deserves no consideration and accordingly, it is dismissed. Record and Proceedings be send back to learned Trial Court.

SATISH

(J. C. DOSHI,J)