

**HIGH COURT OF GUJARAT**

**BHADRESHBHAJ MANEBKHAJ TRIVEDI**

*Versus*

**STATE OF GUJARAT**

**Date of Decision:** 11 October 2001

**Citation:** 2001 LawSuit(Guj) 695

**Hon'ble Judges:** [A L Dave](#)

**Eq. Citations:** **2005 1 GLH 12**

**Case Type:** Criminal Miscellaneous Applicatio

**Subject:** Criminal

**Acts Referred:**

[Code of Criminal Procedure, 1973 Sec 482](#), [Sec 439](#), [Sec 362](#)

**Final Decision:** Application dismissed

**Advocates:** [A H Mehta](#), [R C Jani](#), [A D Oza](#), [Ashish Desai](#)

**Cases Referred in (+): 11**

**[1]** Rule. Mr. A. D. Oza, Ld. PP for respondent No. 1-State and Mr. A. H. Desai for respondent Nos 2 to 9 waive service of rule. With the consent of learned advocates for parties, matter is finally heard today.

**[2]** This application for deletion / modification of condition imposed in cri. Misc. Appln. No. 1238/20ql is referred by the original applicant-accused who was enlarged on bail upon certain conditions in connection with the offence registered against him by Sabarmati police Station vide CR. No. I-26/2001 for offences punishable under Sections 304, 338, 120 (B) and 114 of IPC and Sections 3 (2) (c) (d) , 7 (1) (i) (ii) and Section 2 of Gujarat Ownership Flats Act, 1973. Later on Sections 406 and 420 of IPC also came to be added.

**[3]** The facts of the case are peculiar in nature and need to be stated:

3.1 An earthquake shook most of the gujarat and, particularly, Ahmedabad resulting into collapse of a sizeable number of buildings and resulting into

casualties, injuries and damage to properties. One such building was Vidya laxmi Apartment with A and B blocks. The Chairman of the said apartment, one Dr. Jatin Jagmohan Gupta lodged an FIR with Sabarmati Police Station on 31.1.2001 in connection with the collapse of the building in the earthquake on - 26.1.2001 alleging that the building had collapsed because of poor quality 'of' construction. Following the lodging of fir offence was registered vide CR No. I 26/2001 and investigation commenced. The applicant came to be arrested in 9 connection with the offence and applied for bail before the Sessions Court which came to be rejected. He, therefore, moved this Court with Cri. Misc. Appln. No. 1238/ 2001 under Section 439 of Cr. P. C which came to be disposed of by order dated , 1.5.2001 and the applicant was admitted to bail upon certain conditions.

3.2 The applicant accepted those o conditions and complied with them. Later on, present application came to be filed on 31st July, 2001 for revocation/modification of conditions imposed by this court,.

3.3 Later on, an amendment was sought and certain other contentions were raised and an additional relief was also sought for permitting the applicant to withdraw the statement made by the advocate and not to insist for implementing the undertaking given by the applicant and for releasing the applicant / accused from implementing the undertaking.

3.4 The applicant had not joined the residents of the apartment. However, they having come to know about this application preferred Misc. Cri. App- lication No. 7257/2001 for allowing them to join the litigation as respondents. The said applieation was allowed and that is how the respondent Nos 2 to 9 have now appeared on record.

3.5 The applicant was released on bail by order of this court upon certain conditions and on the basis of certain concession and undertaking given by him before this court.

3.6 On reading the order of this Court which is sought to be modified/rectified by the applicant, it is found that the learned advocate for the applicant had submitted before this Court that in the present ease the petitioner should be enlarged on bail on the lines on which in similarly situated case this Court has exercised its discretion in favour of the applicant/accused against whom similar type of ol't'ences were registered. Both the learned advocate for applicant as well as learned Public Prosecutor had pointed out that in similar type of cases, this court had enlarged the accused persons by imposing stringent conditions and issuing certain directions

under which some amount of compensation also came to be paid to the victims of the incident.

3.7 A specific query was advanced by the Court and the learned advocate for the applicant had accepted that order can be passed on the lines of earlier orders which were passed by this court in misc. Cri. Appln. Nos 2158/2001, 1678/ 2001 and 3068/2001 dated 24.4.2001, 18.4.2001 and 30. 4.2001 respectively without assigning reasons. A draft undertaking was also tiled by the learned advocate for applicant duly signed by him before the court. The court after considering the submissions decided to exercise its discretion in favour of applicant upon certain conditions and on the lines of earlier orders. An statement was made by the learned advocate for the applicant that the applicant was ready and willing to pay the amount of rs. 75,000/-for each of the victims (who 'have died) in the incident when the building had collapsed, and that the applicant-petitioner shall deposit -the said amount of Rs. 3,75,000/- in the court within ten days from the date of his release. It was also stated by the learned advocate for applicant that the applicant shall erect and construct the collapsed building as per the new building guidelines issued by the competent authority in this regard within 24 months from the date of his release by getting proper approval from the concerned authority and shall bear the entire cost of the construction. It was also clarified that the amount of ex-gratia compensation which is to be paid or received by the family members of the victims of the occupants of the houses shall not be adjusted in any manner whatsoever to wards the cost of construction. It was also stated by the learned advocate for applicant that within a week from the date of release, the applicant-accused shall file necessary undertaking to the effect that the petitioner will provide flats to all the respective members of the apartment whose flats have been collapsed and confirm that he shall deposit the amount of Rs. 3,75,000/- 5 before this court.

3.8 Considering the statement made by the learned advocate for applicant at Bar. a direction was issued by the court for filing an undertaking in this court by the applicants in lieu of the statement made at the Bar hy the learned advocate for applicants within ten days from the date of the order.

3.9 It is also clear that the parties had not pressed for a reasoned order. The court therefore, directed, in view of the statement made by the learned advocate : for applicant, that the applicant shall deposit Rs. 3,75,000/- in the court in the name of the Registrar of this Court and the Registrar shall accept the said amount A direction was also issued to the Registrar that on realisation of the said amount, the Registrar shall deposit the said amount with the State Bank of india, High Court branch, Sola at ahmedabad for a period of one year in the name of the Registrar of this Court. Liberty was reserved for the parties inchiding the heirs and legal

representatives of the victims who have died to approach this Court in case of any difficulty in respect of the said amount which may be deposited before this Court. Certain other conditions were also imposed like not to hamper or pressurise the prosecution witness or complainant in any manner; not to act in any manner injurious to the interest of the prosecution, etc.

3.10 It was also directed that if breach of any of the conditions is committed, the sessions Judge concerned will be free to issue warrant or take appropriate action in the matter. Direction was also issued to the petitioner that pursuant to the statement made before the court, necessary undertaking, as referred to earlier in the said order, was required to be filed before the court by the petitioner within ten days from the date of said order and that such undertaking shall be strictly complied with by the applicant without fail and that in the event of noncompliance of any such terms of said undertaking, the respondent-State as well as the concerned members of Vidyalaxmi apartment, Block "a" would be entitled to file necessary application before this court for cancellation of order granting bail in favour of applicant.

3.11 It was also directed that if the petitioner fails in handing over the possession of flats within 24 months, in that event, it will be open for the petitioner to apply for extension of time and such extension, if granted, the victims can simultaneously pray for damages, caused due to delay per day.

3.12 Lastly, the court observed that the order was passed considering the peculiar facts and circumstances of the case as well as considering the undertaking of the petitioner and depositing the amount for the victims as well as members, therefore, the order may not be treated as precedent for other similar cases.

**[4]** There is no dispute about the fact that pursuant to the above order, the accused was released on bail; that he has filed undertaking as per the directions of the court; and that he has deposited the amount as per the direction of this Court with the Registry of this court, but the construction work has not yet commenced.

**[5]** The applicant has approached this court with this application for modification of the conditions regarding deposit/payment of compensation and construction of the building imposed as stated above. It is the say of the applicant that the conditions are imposed by this court by transgressing the scope and ambit of Sections 437, 438 and 439 of cr. P. C as well as Section 357 of Cr. P. C and therefore the conditions are sought to be deleted. The main contention is that in imposing these conditions in exercise of criminal jurisdiction in criminal proceedings, the court has virtually passed a civil decree and has also ensured its execution. This could not have been done by this

Court. The order is, therefore, illegal and this Court should revise/review its order or rectify this error.

**[6]** Learned advocate Mr. Mehta appearing for the applicant submitted that although initially the application was moved for modification or revocation / deletion of condition regarding filing of an undertaking by the applicant for construction of flats and depositing of amount of Rs. 3,75,000/-, it has, in fact, subsequently been sought to be amended and the application is intended at requesting the court to rectify its own error, it being a court of record. Mr. Mehta submitted that these conditions are imposed in total neglect of provisions of law and in transgression of scope and ambit of law governing the bail. It was submitted by Mr. Mehta that if these conditions are permitted to stand it would result into passing and execution of a decree without adjudication. He submitted that although an undertaking was given by the learned advocate for applicant which is later on ratified by the applicant it cannot grant jurisdiction to this Court to pass such an order, nor the court could have assumed such a jurisdiction. Mr. Mehta submitted that the applicant does not expect this Court to review or revise its own order nor to exercise its inherent powers but expect the court to rectify its own error. He submitted that this Court has committed an error and this being a Court of record. He submitted that constitutionally what is done by this Court would be a binding precedent for the subordinate judiciary. Unless this order is rectified, it would amount to perpetuating the illegality and error and, therefore this court should rectify its own error by allowing this application.

**[7]** Mr. MEHTA has placed reliance on certain decisions to support his contention, namely, (i) State of Maharashtra v. Anand Chintaman Dighe (AIR 1990 SC 625) , (ii) M. M. Thomas v. State of Kerala (AIR 2000 SC 540) , (iii) a. R. Antulay v. R. S. Nayak (AIR 1988 sc 1531) and (iv) Gurbaksh Singh Sibia v. State of Punjab (AIR 1980 SC 1632).

7.1 Mr. Mehta submitted that this court should rectify its own error and the discretion - expected to be used by this court should be for doing justice and if this order granting bail by imposing conditions is permitted to stand it would render injustice to the applicant as the applicant is held liable for making good a civil liability which he has done to protect his liberty and if he fails he would be deprived of his liberty. According to mr. Mehta this is no justice. He has relied on the decisions in the matter of Jadab singh and ors v. Himachal Pradesh administration (AIR 1960 SC 1008) and in the matter of M. Srinivasulu Reddy v. State of Tamil Nadu (2000 (6) Scale 580) as well as Black's Dictionary to show what is meant by term "justice".

7.2 Mr. Mehta submitted that under the circumstances this application may be allowed. He submitted that this Court has not only jurisdiction and power to grant this application but it is also the duty and obligation of this court to allow this application and rectify its own error.

**[8]** This application is strongly opposed to by the Ld. Public Prosecutor Mr. A. D. Oza appearing for the State. He submitted that this was an order ad invitum and, therefore, the applicant cannot now challenge it. The second limb of the contention of Mr. Oza is that this application is not maintainable before this Court. He submitted that if it is felt by the applicant that the order was passed without Jurisdiction by the earlier bench, the same could have been challenged before appropriate higher forum, and a Coordinate Bench cannot decide as to whether the order passed by another Bench is without jurisdiction or illegal nor can it review or revise the said order passed in exercise of criminal jurisdiction. Mr. Oza submitted that the conditions imposed in the order sought to be modified/deleted/rectified have already : been complied with and at this stage the order may not be interfered with by this court. He submitted that the interest of victim, community and the Nation are the factors which have been declared as relevant by the Apex Court in the matter of Kartar Singh v. State of Punjab (1994) 3 SCC 569). He submitted that this being an order ad invitum, this application is, in fact, an abuse of process of law by the : applicant and the applicant may be sternly dealt with. He urged that this application may, therefore, be rejected.

**[9]** Mr. Desai, learned advocate: appearing for rest of the respondents submitted that in light of decisions in the matter of Smt. Suraj Devi v. Pyare Lal (AIR 1991 SC 736) and in the matter of most. Simrikhia v. Smt. Dolley: mukherjee @ Smt. Chabbi Mukherjee (AIR 1990 SC 1605) application under section 362 or 482 of Cr. P. C. is not maintainable and, it is not permissible for this Court to exercise its powers in such type of cases.

9.1 Mr. Desai contended that what is sought to be amended/deleted/rectified is not the condition of the bail but it is a. retreat from a voluntary liability accepted by the applicant and withdrawal from the undertaking given to the court, and it may be viewed seriously, otherwise, there would be no sanctity of any such undertaking given to the, court. He submitted that there is no question of transgressing jurisdiction under Sections 437, 438 and 439 of Cr. P. C.

9.2 Mr. Desai submitted that it is not permissible for a single Judge of this court to hold that the conditions imposed by another single Judge of this Court are illegal. In support of his contention, he relied on the decision in the matter of state of Gujarat v. Nitaben Abhaybhai mchta (1993 (1) GLR 705). In the circumstances, Mr. Desai submitted that this application may be rejected.

**[10]** This Court has considered the rival side contentions in light of the facts of this case and various decisions relied on by the rival sides.

**[11]** Before entering into the merits, since the maintainability of this application is challenged, it would be appropriate to deal with that question first.

11.1 The applicant has in his wisdom not indicated as to under which provision of law he has tendered this application. Ld. Senior Advocate Mr. Mehta appearing for the applicant has also made it clear that this application is neither for review or for revision of the order nor is this an application under Section 482 of Cr. P. C requesting the court to exercise its inherent powers. The application is, therefore, under no specific provision of law. It is required to be considered whether in absence of any specific provision awarding jurisdiction to this court, this Court should entertain this application calling for correcting error/ revoking/ deleting the conditions imposed by another Coordinate Bench of this court. In this regard, the decision in the matter of State of Gujarat v. Nitaben abhaybhai Mehta (1993 (1) GLR 705) may be profitably looked into. In that judgment it was observed as under: "this court cannot go into the question whether the Court earlier committed an error in imposing the aforesaid condition nos 4 and 9 in the order while granting anticipatory bail to the accused or the said conditions are redundant and non est in eye of law. It would amount to sitting in the judgment as an Appellate Court over the decision of this court. " quoting the decision of the Apex Court in the case of Dhian Singh v. Union of india (AIR 1992 SC 474) it was observed that "no Bench can comment on the functioning of a Coordinate Bench of the same court, much less sit in judgment as an Appellate Court over its decision. " in the said decision it was further observed by the Apex Court in the matter of Dhian Singh (supra) that "it was not consistent with the judicial discipline which must be maintained by courts both in the interest of the administration of justice by assuring the binding nature of an order which becomes final, and the faith of people in the judiciary".

11.2 Admittedly, the conditions sought to be deleted/revoked/mistake rectified are the conditions imposed by a single judge of this Court while disposing of cri. Misc. Application No. 1238/2001. a therefore, it is not permissible for this court to modify/delete/revoke these conditions holding that they are imposed in transgression of scope and ambit of sections 438 and 439 of Cr. P. C. It is also not permissible for this Court to hold that it was not permissible in law nor was it legal to impose such conditions. It is not permissible for this court to hold that imposition of 4 conditions or giving of directions in that order was a mistake which is required to be rectified.

**[12]** Apart from this, when considering the question whether this court should entertain this application for "correcting its error" the decision in the matter of *smt. Suraj v. Pyare Lal* (AIR 1981 SC 736) may be considered. By this application, what is, in substance, sought to be done is to review or revise the order passed by this Court in Cri. Misc. Appln. No. 1238/2001 on the ground of "transgression of jurisdiction". If the said decision is examined, the Apex Court, after considering the provisions of sections 362 and 482 of Cr. P. C ruled that "the application for clarification by a declaration that it was not binding on applicant and did not affect applicant's possession was not maintainable and inherent powers also can not be invoked". The Apex Court further specifically ruled that "only a clerical or arithmetical error can be rectified". In the instant case, what is sought to be rectified is not a clerical or arithmetical error. In fact, for entertaining the prayer, this ;court will have to hold that an error is committed by a Coordinate Bench which would, in effect, amount to sitting in appeal over the order of a Coordinate Bench. If the i contention is to be accepted and entertained, this Court will also have to hold that the Coordinate Bench transgressed its jurisdiction in imposing the conditions or passing the order which in view of the above decision, is not permissible for this Court to do.

12.1 In the matter of *Mosst. Simrikhia v. Smt. Dolley Mukherjee @ Smt. Chabbi Mukherjee* (AIR 1990 SC 1605) the Apex court ruled that "inherent powers cannot be exercised by a court so as to review its own judgment". In that case the provisions of Section 482 of Cr. P. C. were considered by the Apex Court. In the instant case, as already observed, in substance, what is sought to be reviewed or revised is its own order, namely, granting bail under certain conditions or directions.

**[13]** Mr. Mehta in support of his contention relied on the decision in the matter *A. R. Antulay v. R. S. Nayak* (AIR 1988 SC 1531) and submitted that even the Apex Court corrected its own error by changing its order. In that case a corruption case which was triable by a special Judge was transferred by the apex Court to the High Court Judge. The apex Court by the said judgment recalled its own order issued in the matter reported in AIR 1984 SC 684 holding that the Supreme Court was not competent to issue directions. It is not possible to accept the contention of mr. Mehta that this Court should likewise grant this application and rectify its own error because this Court is not competent to hold that an error is committed by a coordinate Bench of this very Court. There is a higher forum, namely, the apex Court, available to the aggrieved party to approach and get the grievance redressed, if at all, any error is committed. Therefore, this decision cannot help the applicant.

13.1 Mr. Mehta relied on the decision in the matter of *M. M. Thomas v. State of kerala* (AIR 2000 SC 540) to support his contention that the High Court can rectify

its own error. In that case the Apex Court held that the High Court can de hors provisions of Section 8-C (2) of the Kerala Private Forests (Vesting and assignment) Act, 1971. can review its own decision if it satisfied that there is error apparent on face of record. (In the instant case, it cannot be said that what is sought to be reviewed, revised or corrected is an error apparent on face of record. The court has to examine the question of jurisdiction and other aspects contended before this court by the applicant. It is not a typographical or mathematical error that has crept in which is sought to be corrected and, therefore, this decision cannot be applied. to the facts of the instant case.

**[14]** In view of above discussion, this court is of firm view that it is not competent to hold that a jurisdictional error is committed by the earlier Coordinate bench of this Court while passing the order granting bail imposing certain conditions in Cri. Misc. Application no. 1238/2001 apart from the fact that the said order was passed on the basis of certain earlier orders relied on by the applicant and also the fact that the said order was, in fact, an order ad invitum.

14.1 No provision of law is indicated which would empower this Court to entertain this application in the form it was preferred. In fact, the decisions of the Apex Court have settled the law on the point and, therefore, this application cannot be entertained by this Court.

**[15]** In view of the fact that this Court has come to conclusion that this application is not maintainable, the other contentions are not required to be gone into by this Court because for deciding these contentions the Court will have to examine aspects and give verdict on those aspects which is not permissible.

**[16]** In view of the above discussion, this application cannot be entertained and same is rejected. Rule is discharged. (HRP) Application rejected.