

## **Pankajbhai Nagjibhai Patel vs The State Of Gujarat & Anr on 12 January, 2001**

**Equivalent citations: (2001) 2 ICC 457, AIR 2001 SUPREME COURT 567, 2001 (2) SCC 595, 2001 AIR SCW 184, 2001 CLC 185 (SC), (2009) 1 NIJ 69, 2001 (2) SRJ 223, 2001 (1) UJ (SC) 485, (2001) 1 CGLJ 497, 2001 ALL MR(CRI) 406, 2001 CALCRILR 228, 2001 CORLA(BL SUPP) 145 SC, 2001 (1) LRI 191, 2001 (1) SCALE 102, 2001 SCC(CRI) 369, 2001 (1) ALL CJ 338, 2001 UJ(SC) 1 485, (2001) 1 JT 523 (SC), 2002 CRILR(SC MAH GUJ) 107, (2001) ILR (KANT) (3) 3399, (2001) 2 RECCRIR 517, (2001) 57 DRJ 162, (2001) 2 ALLCRILR 734, (2001) 1 ANDH LT 562, (2001) 2 CURCC 45, (2001) 3 ALLCRILR 67, (2001) 104 COMCAS 418, (2001) 1 SCJ 612, (2001) 1 SCALE 102, (2001) 1 UC 198, (2001) 1 CIVLJ 502, (2001) SC CR R 447, 2002 CRILR(SC&MP) 107, (2001) 1 CHANDCRIC 102, (2001) 99 DLT 279, (2001) 3 CALLT 31, (2001) 1 CIVILCOURTC 385, (2001) 2 GUJ LR 1558, (2001) 1 GUJ LH 491, (2001) 1 KER LT 517, (2001) 2 MADLW(CRI) 799, (2001) 20 OCR 315, (2001) 2 RAJ LW 313, (2001) 1 RECCRIR 343, (2001) 1 CURCRIR 106, (2005) 3 BANKCAS 435, (2001) 1 SUPREME 124, (2001) 1 ALLCRIR 636, (2001) 42 ALLCRIC 384, (2001) 1 ALL WC 813, (2001) 1 ANDHWR 35, (2001) 1 CRIMES 165, 2001 (1) ANDHLT(CRI) 129 SC, (2001) 1 BANKCLR 557, (2001) 1 ANDHLT(CRI) 129, (2001) 5 BOM CR 244**

**Bench: K.T.Thomas, R.P.Sethi**

CASE NO. :

Appeal (crl.) 66 of 2001

PETITIONER:

PANKAJBHAI NAGJIBHAI PATEL

Vs.

RESPONDENT:

THE STATE OF GUJARAT & ANR.

DATE OF JUDGMENT: 12/01/2001

BENCH:

K.T.Thomas,,, R.P.Sethi

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Two decisions holding a contrary view have been brought to our notice. The first is that of a Single Judge of the Madras High Court in *A.Y. Prabhakar vs. Naresh Kumar N. Shah* {1994 Madras Law Journal (Crl.) 91 = 1995 Company Cases (Vol.83) 191}. The other is that of a Single Judge of the Kerala High Court which simply followed the aforesaid decision of the Madras High Court [*K.P. Sahdevan vs. T.K. Sreedharan*, {1996(2) Criminal Law Journal 1223 = 1996(1) Kerala Law Times 40}]. The learned Single Judge of the Kerala High Court (Balanarayana Marar, J) dissented from a contrary view expressed in an earlier judgment of the same High Court and had chosen to agree with the view of the Madras High Court held in *Prabhakar vs. Naresh Kumar N. Shah* (supra). What Marar, J. had adopted was not a healthy course in the comity of Judges in that he had sidelined the earlier decision of the same High Court even after the same was brought to his notice. If he could not agree with the earlier view of the same High Court he should have referred the question to be decided by a larger bench. Learned Single Judge of the Madras High Court did not advance any reasoning except saying that Section 29(2) of the Code is not applicable in view of the primary clause in Section 142 of the NI Act. As pointed out by us earlier, the scope of the said primary clause cannot be stretched to any area beyond the three facets mentioned therein. Hence the two decision cited above cannot afford any assistance in this appeal.

Non-application of the Code on any special jurisdiction or power conferred by any other law for the time being in force is thus limited to the area where such special jurisdiction or power is conferred. Section 142 of the NI Act has not conferred any special jurisdiction or power on a Judicial Magistrate of first class. That section has only excluded the powers of other magistrates from trying the offence under Section 138 of the NI Act.

(Of course the said provision has since been deleted from the statute book when jurisdiction to try the offences under the Essential Commodities Act has been conferred on Special Court which is deemed to be a Court of Sessions.) Another instance is, Section 36 of the Drugs and Cosmetics Act which says that Notwithstanding anything contained in the Code it shall be lawful for any Metropolitan Magistrate or Judicial Magistrate of the first class to pass any sentence authorised by this Act in excess of the powers under the Code. A similar provision is incorporated in Section 21 of the Prevention of Food Adulteration Act also.

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any special power into it as having conferred on a magistrate of first class in the matter of imposition of sentence.

In this context, we may also point out that if a Magistrate of first class thinks that the fact situation in a particular case warrants imposition of a sentence more severe than the limit fixed under Section 29 of the Code, the legislature has taken care of such a situation also. Section 325 of the Code is included for that purpose. Sub-section (1) of that Section reads thus: Whenever a Magistrate is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than that which such Magistrate is empowered to inflict, or, being a Magistrate of the second class, is of opinion that the accused ought to be required to execute a bond under section 106, he may record the opinion and submit his proceedings, and forward the accused, to the Chief Judicial Magistrate to whom he is subordinate.

If proceedings are so submitted to the Chief Judicial Magistrate under Section 325(1) of the Code it is for the Chief Judicial Magistrate to pass such judgment, sentence or order in the case, as he thinks fit. It is so provided in sub-section (3) thereof. Even that apart, a Magistrate who thinks it fit that the complainant must be compensated with his loss he can resort to the course indicated in Section 357 of the Code. This aspect has been dealt with in Bhaskarans case (supra) as follows: However, the Magistrate in such cases can alleviate the grievance of the complainant by making resort to Section 357(3) of the Code. It is well to remember that this Court has emphasised the need for making liberal use of that provision (*Hari Singh v. Sukhbir Singh*, 1988 (4) SCC 551). No limit is mentioned in the sub-section and therefore, a Magistrate can award any sum as compensation. Of course while fixing the quantum of such compensation the Magistrate has to consider what would be the reasonable amount of compensation payable to the complainant. Thus, even if the trial was before a Court of Magistrate of the first class in respect of a cheque which covers an amount exceeding Rs.5000/- the Court has power to award compensation to be paid to the complainant.

In our view this question does not now pose any practical difficulty. Whenever a magistrate of the first class feels that the complainant should be compensated he can, after imposing a term of imprisonment, award compensation to the complainant for which no limit is prescribed in Section 357 of the Code. In the result, while retaining the sentence of imprisonment of six months we delete the fine portion from the sentence and direct the appellant to pay compensation of Rs.83,000/- to the respondent-complainant. The said amount shall be deposited with the trial court within six months failing which the trial court shall resort to the steps permitted by law to realise it from the appellant. This appeal is disposed of accordingly.