State Of Gujarat vs Chatrabhuj Maganlal And Another on 7 April, 1976

Equivalent citations: 1976 AIR 1697, 1976 SCR (3)1076, AIR 1976 SUPREME COURT 1697, 1976 (1) SCWR 402, 1976 CRI APP R (SC) 151, 1976 GUJLR 828, (1976) 1 SCWR 462, (1976) 3 SCC 54, 1976 SCC(CRI) 359, 1976 SC CRI R 336, 1976 3 SCR 1076, 1977 ALLCRIC 124, 1976 MADLJ(CRI) 496

Author: Ranjit Singh Sarkaria

Bench: Ranjit Singh Sarkaria, N.L. Untwalia

PETITIONER:
STATE OF GUJARAT

Vs.

RESPONDENT:
CHATRABHUJ MAGANLAL AND ANOTHER

DATE OF JUDGMENT07/04/1976

BENCH:
SARKARIA, RANJIT SINGH
BENCH:
SARKARIA, RANJIT SINGH
UNTWALIA, N.L.

CITATION:
1976 AIR 1697 1976 SCR (3)1076
1976 SCC (3) 54
CITATOR INFO :
RF 1991 SC1289 (16)

ACT:
Suppression of Immoral Traffic in Women & Girls Act, 1956, s. 2(c)-If notification empowering all Magistrates of First Class would make them "specially empowered".
Interpretation of statutes-Provision susceptible of two meanings-Choice of meaning where provision confers power on Government for specific purpose.

HEADNOTE:
Section 2(c), Suppression of Immoral Traffic in Women and Girls Act, 1956, defines a Magistrate to mean a District Magistrate, a Sub-Divisional Magistrate of the First Class

specially empowered by the State Government by notification in the official Gazette, to exercise jurisdiction under the Act.

The appellant-State issued a notification under the section empowering all the Judicial Magistrates of the 1st Class to exercise jurisdiction to try certain offences under the Act.

The High Court held that the notification did not have the effect of making a Magistrate one specially empowered within the meaning of s. 2(c).

Allowing the appeal to this Court,

^

HELD: It is not necessary that the State Government should pick and choose individual Magistrates and confer special power on them. The notification had the effect of making every Judicial Magistrate of the First Class in the State, within the area of his respective jurisdiction, a Magistrate specially empowered to try those offences. [1083E; 1084C]

Mohd. Qasim & Anr. v. Emperor, AIR, 1918 Mad. 1159; Emperor v. Udho Chandumal, AIR 1943 Sind 107; Polubha Vajubha v. Tapu Buda, AIR 1956 Sau. 73 and Sabuddin Sheikh Mansur v. J. S. Thakkar & Anr. ILR [1968] Guj. 4, disapproved.

K. N. Vijayan v. State, AIR 1953 Tr. Co. 402. State v. Judhabir Caetri AIR 1953 Assam 35; (F.B.); State of Mysore v. Kashambi & Anr: [1963] 2 Cr. L.J. 226; Ashaq Hussain Khan v. S.D.O. Manghir. ATR 1965 Pat 446 and C. V. Madhava Mannadiar v. Distt. Collector & Ors., AIR 1970 Kerala 50. approved.

(1) Where the language of a statutory provision is susceptible of two interpretations, the one which promotes the object of the provision. comports best with its purpose and preserves its smooth working, should be chosen in preference to the other which introduces inconvenience and uncertainty in the working of the system. This rule will apply in full force where the provision confers ample discretion on the Government for a specific purpose to enable it to bring about an effective result. [1079G-1080A]

(2) The word "specially" has reference to the special purpose of the empowerment and is not intended to convey the sense of a "special" as Contrasted with a "general" empowerment. "Specially" qualifies the word "empowered" and not the person on whom the power is conferred. In this view the State Government is within its competence to confer powers under the section on some or all of the Magistrates of the First Class in the State in any of the modes known to law and the Magistrate or Magistrates. On whom Powers are so conferred, will be "specially empowered" within the meaning of the section. This broad view keeps in focus the special purpose of the empowerment and must be preferred to the narrow view, namely. That the word "specially" stands in contrast to the word "generally". According to

1077

the narrow view if powers to try certain offences are conferred on a class of officials by their official title, they are "generally empowered'; but if the powers are conferred on particular individuals by name or by virtue of their office, as a result of selection by the Government, they are 'specially empowered". This view which reads into the expression "specially empowered" a restriction as to the mode or manner of empowerment, is neither congenial to the special purpose of the provision, nor conducive to the main object of the Act, and tends to reduce its efficacy and to impede the exercise of the discretionary power which the legislature has confided in full measure to the Government.[1079B-D, E-G; 1080B-C, H; 1082G]

(3) The word "specially" signifies the investment of some or all the Magistrates of the First Class with powers which are "special' and are not part of the "ordinary" or "additional" powers which can be conferred on a Magistrate of the First Class under the Code of Criminal Procedure. The fallacy in the narrow view stems from the undue stress it lavs on the mode empowerment at the cost of the special purpose of the empowerment ignoring the fact that the Act is a code by itself which creates new offences triable only by those Magistrates of the First Class who are specially empowered under s. 2(c) of the Act, and not under the Code of Criminal Procedure. Power may be conferred under s. 39 of the Code of Criminal Procedure, 1898, corresponding to s. 32 of the Code of Criminal Procedure, 1973, on any person either by name or in virtue of his office or on classes of officials generally by their official title. The special mode or the general mode of conferring the power applies to the conferment of power both for a general purpose or a special purpose. The mode of conferring power is not to be confused with the purposes of the power. [1082H; 1083B-D]

(4) A person can be specially empowered even by virtue of his office. If empowering a Magistrate of the First Class to try offences under the Act by virtue of his office satisfies the requirement of s. 2(c), there is no reason why the empowerment of all the Magistrates of the First Class in the State under the notification by virtue of their office to try offences under the Act in the areas of their respective jurisdictions should not be held to be special but treated as general. The Government could have issued separate notifications for each Magistrate. Instead of doing so if one notification were to be issued authorising each of them to perform those functions, there could be no valid objection. [1081F-G; 1083E-F, G-1084B]

Sindhi Lokana Chajthram v. State of Gujarat, [1967] 3 S.C.R. 351 and Abdul Hussain Tayabali and ors. v. State of Gujarat and ors. [1968] 1 S.C.R. 597, followed.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 212- 213/71.

Appeal from the Judgment and order dated the 21st November, 1970 of the Gujarat High Court in Criminal Revision Applications Nos. 321 and 322 of 1969.

S. N. Anand and M. N. Shroff for the Appellant. N. H. Hingorani and (Mrs.) K. Hingorani for the Respondent The Judgment of the Court was delivered by SARKARIA, J. Controversy in these appeals centres round the interpretation of the words "specially empowered"

appearing in s. 2(c) of the Suppression of Immoral Traffic in Women and Girls Act, 1956 (to be (hereinafter referred to as the Act).

The facts giving rise to these appeals are as follows:

Chaturbhuj Maganlal and Bai Sabita, respondents herein, are husband and wife residing together at Parvati Bhuvan, Rajkot. Both of them together with Bai Hamida Basi Mohammed, respondent 3 herein, are accused 1, 2 and 3 respectively, in a trial for offences punishable under ss. 5 and 6 of the Act before the Judicial Magistrate, First Class Rajkot in Cr. Cases Nos. 1372 and 1404 of 1968. When the trial was about to commence in these cases, the accused moved applications raising an objection that the Magistrate had no jurisdiction to try the offences as he had not been "specially empowered" as required by s. 2(c) of the Act. The Magistrate rejected those applications whereupon the accused went in revision before the Sessions Judge, Rajkot who dismissed the same.

Aggrieved, the accused filed two revisions (Cr. R. 321 and 322 of 1969) in the High Court of Gujarat. A learned Judge of the High Court allowed the revisions on the ground that Mr. Modha, Magistrate 1st Class Rajkot, before whom these cases were pending, had no jurisdiction to try the same because the State Government notification, dated February 19, 1959 did not have the effect of making him a "Magistrate of the first class specially empowered" within the meaning of s. 2(c) of the Act. Accordingly, the Magistrate was directed to drop the proceedings pending against the revision-petitioners.

Against that decision of the High Court, the State has now filed these appeals on a certificate granted by the High Court under Article 134 (1) (c) of the Constitution.

Section 2(c) of the Act defines a "Magistrate" to mean "a District Magistrate, a Sub-Divisional Magistrate of the First Class specially empowered by the State Government, by notification in the Official Gazette, to exercise jurisdiction under the Act".

Section 22 further says:

> "No court inferior to that of a magistrate as defined in Clause (c) of Section 2 shall try any offence under Section 3, Section 4, Section 5, Section 6, Section 7 or Section 8".

The State Government Notification No. PPA/1257/84187/X of July 22, 1958, published in the Bombay Government Gazette of July 31, 1958, purporting to have been issued under s. 2(c), runs as follows:

> "In the exercise of the powers conferred by s. 2(c) of the Suppression of Immoral Traffic in Women and Girls Act, 1956, the Government of Bombay hereby empowers all the Judicial Magistrates of the First Class to exercise jurisdiction under the said Act, except under ss. 12(1), 18(1), 19, 20(1) and (3) of the Act."

The question is, whether this notification has the effect of making every Judicial Magistrate of the First Class in the State within the area of his respective jurisdiction, a Magistrate competent to try any offence under ss. 3, 4, 5, 6, 7 and or 8 of the Act?

Answer to this question depends on a correct interpretation of the expression "specially empowered" in Section 2(c). There has been a sharp conflict of judicial opinion in regard to the meaning of this expression.

One line of decisions has taken the view (hereafter referred to us the narrow view) that the word "specially" in this expression has reference only to the mode of empowerment as indicated in s. 39(1) of the Code of Criminal Procedure, 1898. According to this view the word "specially" stands in contrast to the word "generally". Therefore, if powers to try certain offences are conferred on a class of officials by their official title, they are "generally empowered"; but if the powers are conferred on particular individuals by name or by virtue of their office, they are "specially empowered". On this reasoning it is deduced that the words "specially empowered" imply "the exercise by Government of a certain selection or discrimination as regards an individual on whom the special power is to be conferred". Some of the cases in which this view has been expounded are: Mohd. Qasim and anr. v. Emperor; Emperor v. Udho Chandumal; Polubha Vajubha v. Tapu Ruda; and Sabuddin Sheikh Mansur v. J. S. Thakkar and anr.

A different view (hereafter referred to as the broad view) has been taken in these decisions: K. N. Vijavan v. State; State v. Judhabir Caetri; State of Mysore v. Kashambi and anr.; Ashaq Hussain Khan v. S. D. O. Monghir, C. V. Madhava Mannadiar v. District Collector and ors. According to this view, the word "specially" has reference to the special purpose of the empowerment and is not intended to convey the sense of a "special" as contrasted with a "general" empowerment. "Specially" qualifies the word "empowered" and not the person on whom the power is conferred. In this view, the State Government is within its competence to confer powers under s. 2(c) of the Act on some or all the Magistrates of the First Class in the State, in any of the modes known to law, and the Magistrate or Magistrates whom powers are so conferred will be "specially empowered" within the meaning of s. 2(c).

In our opinion, this broad view rightly keeps in focus the special purpose of the empowerment and must be preferred to the narrow view.

It is will recognised that where the language of a statutory provision is susceptible of two interpretations, the one which promotes the object of the provision, comports best with its purpose and preserves its smooth working, should be chosen in preference to the other which introduces inconvenience and uncertainty in the working of the system. This rule will apply in full force where the provision confers ample discretion on the Government for a specific purpose to enable it to bring about an effective result.

The Act has been enacted to suppress a special kind of mischief. With that end in view it creates new offences, and confers wide powers on the Government to constitute special machinery for its enforcement. Th narrow view taken in the decision led by Mohd. Qasim's case, which reads, with external aid, into the expression "specially empowered" a restriction as to the mode or manner of empowerment, is neither congenial to the special purpose of the provision, nor conducive to the main object of the Act. It tends to introduce unnecessary inconvenience, friction, confusion and artificiality in the working of the provision. It also tends to reduce its efficacy and impede the exercise of the discretionary power which the Legislature has, in its wisdom, confided in full measure to the Government. In the context of s. 2(c) of the Act, therefore, the narrow, restrictive interpretation of the expression "specially empowered" has to be eschewed.

Incidently, it may be noticed that none of the decisions expounding the narrow view, was concerned with the interpretation of the expression "specially empowered" in the context of the Suppression of Immoral Traffic in Women and Girls Act. In Mohammed Qasim v. Emperor, (supra) which leads the exponents of this view, the Madras High Court was concerned with the construction of this expression as used in s. 3 of the Opium Act. Similarly, the Full Bench decision of the Gujarat High Court in Sabuddin's case (supra) (the ratio of which has been followed by the Judgment under appeal), turns on an interpretation of this expression in the context of s. 56 of the Bombay Police Act.

On the other hand, in State of Mysore v. Kashambi and anr. (supra) which is a prominent exponent of the broad view, the construction of s. 2(c) of the Act was directly in issue before the Mysore High Court. Therein, by a notification, the State Government conferred powers on all First Class Magistrates to try cases under the Act. The accused, Kashambi and Mohadinbi were being prosecuted under s. 8(a) of the Act in the court of Judicial Magistrate First Class, Saundatti. The accused raised an objection that the Magistrate had no jurisdiction to try the cases because the aforesaid notification was invalid and ineffective to confer the jurisdiction on him as it did not satisfy the requirement of s. 2(c) regarding "special empowerment". Hegde, J., who spoke for the Bench, expressly dissented from the view taken in Polubha Vajubha v. Tepu Buda (supra) and Mohammed Qasim v. Emperor (supra) and held that the language of s. 2(c) of the Act does not justify the contention that such a notification amounts to general conferment of power as opposed to special conferment of power as required by s. 2(c) and therefore enlarges the scope of that section. In the opinion of the Bench, the word "specially" is an adjective (adverb ?) to the verb "empowered" and not an adjective to the noun "Magistrate" and that this word means "specifically" or "for a

particular purpose". The Bench did not accept the contention that the word "specially" conveys the idea of picking and choosing of the Magistrate or Magistrates for the purpose of conferring the additional powers. It was emphasised that the conferment of power under s. 2(c) of the Act is not made by having recourse to s. 39, Cr. Procedure Code.

In our opinion, the view taken by the Mysore High Court in Kashambi's case is the correct one. It seems to be more in accord with the trend of the recent decisions of this Court, in which such an expression came up for construction. In this connection, the first case to be noticed is Sindhi Lohana Chaithram v. State of Gujarat. Therein the meaning of the expression "specially empowered" occurring in s.6(1) of the Bombay Prevention of Gambling Act, 1887 came up for consideration. By a notification, dated January 22, 1955. the Saurahtra Government empowered specially certain Assistant Superintendents and Deputy Superintendents of Police, Porbander Division, Porbander, to authorise by issue of special warrants in each case, a police officer not below the rank of Sub-Inspector of Police to do the Varios things necessary in order to raid a house when the police officer suspected gaming to be carried on and which house, room or place was suspected us being used as a common gaming house. The appellant's house was raided by a Sub-Inspector of Police,and on the basis of incriminating evidence the appellant and six others were charged under ss. 4 and 6 of the Act. At the trial the accused contended that Shri Pandhya, the Deputy Superintendent of Porbander who issued the search warrant, was not authorised to do so because the aforesaid notification did not specially empower Shri Pandhya within the contemplation of s. 6.

This Court expressed that in view of the principle embodied in s. 15 of the Bombay General Clauses Act, 1904 when power is conferred on a person by name or by virture of his office, the individual designated by name or as the holder of the office for the time being is empowered specially. Judging by this test, the Court held that the notification, dated January 22, 1955, "specially empowered"

> Shri Pandhya, holder of the office of the Dy.Superintendent of Police,Porbander to issue the search warrant under s. 6. The Court noticed the conflict of judicial opinion on the question whether a notification empowering all Magistrates of certain class to try certain class, can be said to be empowered specially every Magistrate of that class to try those cases,but left that question open.However, it settled that a person can be specially empowered even by virtue of his office.
>
> Again, in Abdul Husein Tayabali and ors. v. State of Gujarat and ors. decided on September 20, 1967, the construction of the expression "specially appointed" within the meaning of s. 3(c) of the Land Acquisition Act, 1894 read with r. 4 of the Land Acquisition (Company's) Rules, came up for consideration before this Court. By a notification, dated October 1, 1963, issued under s. 3(c) of the Land Acquisition Act, the State Government authorised all Special Land Acquisition Officers in the State to perform the functions of Collectors under that Act within the area of their respective jurisdiction. Question arose whether that notification satisfied the requirements of s. 3(c) and had the effect of specially empowering all the Land Acquisition Officers as a class to perform the duties under the Act. Shelat, J., speaking for a Bench of three learned Judges, answered this question in the affirmative and made these apposite

observations:

> "In our view, these words (specially appointed) simply mean that as such an officer is not a Collector and cannot perform the functions of a Collector under the Act, he has to be 'specially appointed', that is, appointed for the specific purpose of performing those functions. The word specially'has therefore reference to the special purpose of appointment and is not used to convey the sense of a special as against a general appointment. The word "specially" thus connotes the appointment of an officer or officers to perform functions which ordinarily a Collector would perform under the Act. It qualifies the word "appointed" and means no more than that he is appointed specially to perform the functions entrusted by the Act to the Collector. It is the appointment therefore which is special and not the person from amongst several such officers. Besides sec. 15 of the General Clauses Act provides that where a Central Act empowers an authority to appoint a person to perform a certain function such power can be exercised either by name or by virtue of office."

There would therefore be no objection if the appointment is made of an officer by virtue of his office and not by his name."

The above observations are an apt guide to the interpretation of the expression "specially empowered" in s. 2(c) of the Act with which we are concerned. Although the word in s. 3(c) of the Land Acquisition Act, the construction of which was considered in Abdul Hussain's case, were "specially appointed", their connotation is the same as conveyed by the expression "specially authorised" or "specially empowered" (see Oxford Dictionary according to which the word "authorised" means "empowered" "appointed"). In constructing the expression "specially empowered" in the instant case, therefore,we can safely adopt the reasoning in Abdul Hussain's case. Thus considered, the term "specially" must be taken to have reference to the special purpose of the empowerment. Even according to Oxford Dictionary, one sense of this word is "of special purpose". It qualifies the word "empowered". It is used in an attributive sense to highlight the special nature of the power. It does not convey the sense of a contradistinction or contrast between "special" empowerment and "general" empowerment. All that this word signifies is the investment of some or all the Magistrates of the First Class with powers which are 'special'and are not part of the 'ordinary' or 'additional'powers which can be conferred on a Magistrate of the First Class under the Code of Criminal Procedure. In short, the word "specially"

cannotes that it is the empowerment which is special and not the person.Thus considered, special empowerment does not necessarily involve selection of individuals by name or ex- offico from the Magistrates of the 1st Class.

The fallacy in the narrow view stems from the undue stress it lays on the mode of empowerment at the cost of the special purpose of the empowerment, forgetting that the Act is a code by itself which creates new offences triables only by those Magistrates of the 1st Class who are specially empowered under s. 2(c) of the Act,and not under the Code of Criminal Procedure.

Be that as it may,s.39 of the Code of Criminal Procedure, 1898 and s.32 of the Code of Criminal Procedure,1973, are concerned with the mode of conferring power. "Power may be conferred on any person either by name or in virtue of his office", or "on classes of official generally by their official title". The special mode or the general mode of conferring the power applies to the conferment of power both for a general purpose or a special purpose. The mode of conferring power is not to be confused with the purpose of the power,as seems to have been done in the cases taking the narrow view.

The narrow view can be tested yet from another angle. According to it if a Magistrate of the 1st Class is selected by name or by virtue of his office and invested with these powers to try offences under the Act,he would be "specially empowered". If no such pick and chose is made and the power is conferred on all the Magistrates of the same class, they would be "generally empowered". This distinction if taken to its logical and, breaks down, and exposes the inherent artificiality of the proposition. If the empowering of a Magistrate of the First Class to try offences under this Act, by virtue of his office, satisfies the requirements of s. 2(c), it is not understood how the empowerment of a whole class of Magistrates of the First Class by the same mode becomes ultra vires the section.

In Abdul Hussain's case, the contention canvassed for the narrow view was considered from this aspect, also. It was observed:

> "...even if the meaning of the word 'specially' were to be that which is canvassed (by the appellant), the Government could have issued separate notification for each of the Sp. L. A. Officers authorising them individually to perform the functions of the Collector within their respective area of jurisdiction. Instead of doing that, if one notification were to be issued authorising each of them to perform those functions there could be no valid objection. Such a notification would have the same force as a separate notification in respect of each individual Sp. L. A. Officer. Such a notification would mean that the Government thereby appoints each of the existing Sp. L. A. Officers to perform the functions of the Collector within their respective areas."

On parity of reasoning ,it can be said that the empowerment of all the Magistrates of the First Class, in the State under one notification ,by virtue of their office to try offences under the Act in the area of their respective jurisdiction, must be held to be "special" and not "general".

It will not be out of place to mention here that Abdul Hussain's case was decided by this Court on September 20, 1967, that is, about four and half months after the Full Bench decision of the Gujarat High Court in Sabuddin's case (supra), Consequently, the Bench did not have the advantage of the guidance furnished by Abdul Hussain's case.

In the light of the construction put by us on the expression "specially empowered" as used in s. 2(c) of the Act, we hold that by virtue of the State Government Notification dated July 22, 1958, the Judicial Magistrate First Class Rajkot has the jurisdiction to try the offences under the Act. Accordingly, we allow these appeals, set aside the judgment of the High Court. The cases will now go back to the Judicial Magistrate, First Class, Rajkot for further proceedings in accordance with law.

The cases, being very old, it is directed that they be disposed of on top- priority basis, with utmost expedition, if possible, within three months from today.

V.P.S. Appeals allowed.