

Gujarat High Court

State vs Venishanker Kalidas Bhatt on 6 March, 1961

Equivalent citations: (1962) 3 GLR 33

Author: V Raju

Bench: V Raju, R Mehta

JUDGMENT V.B. Raju, J.

1. This is an appeal by the State of Gujarat against the acquittal of the respondent who was charged with having committed an offence punishable under Section 34 of the Bombay Money Lenders Act for having contravened Section 18(2) of the same Act in that he did not send copies of the accounts in respect of three money-lending transactions dated 24-12-57 27 and 30-12-57 relating to loans advanced by him to Kisnad Group Co-operative Multi-purpose Society. The learned Judicial Magistrate First Class Broach who tried the case acquitted the respondent on the ground that a loan to a Co-operative society was not included in the definition of loan contained in Section 2(9) of the Bombay Money-Lenders Act. On this ground he acquitted the respondent although according to the Magistrate all the facts about the advancing of the loans were admitted by the respondent who was accused.

2. In appeal it is contended by the learned Government Pleader on behalf of the State that the view taken by the learned Magistrate is erroneous. The learned Counsel for the appellant supports the judgment of the learned Magistrate.

3. The questions for our decision are therefore: (1) whether the learned Magistrate erred in holding that a loan to a Co-operative Society is not included in the definition of loan contained in Sub-section (9) of Section 2 of the Bombay Money Lenders Act and (2) whether the learned Magistrate erred in acquitting the respondent.

4. Our findings are: (1) Yes and (2) No. The relevant clauses of Sub-section (9) of Section 2 of the Bombay Money-Lenders Act which define loan are as follows:

"Loan" means an advance at interest whether of money or in kind but does not include-

(a) a deposit of money or other property in a Government Post Office Bank or in other bank or in a company or with a co-operative society;

(b) a loan to or by or a deposit with any society or association registered under the Societies Registration Act 1860 or any other enactment relating to a public religious or charitable object;

(c) a loan advanced by Government or by any local authority authorised by Government;

(d) a loan advanced by a co-operative society;

(d1) an advance made to a subscriber to or a depositor in a Provident Fund from the amount standing to his credit in the fund in accordance with the rules of the fund:

(d2) a loan to or by an insurance company as defined in the Insurance Act 1948

(e) a loan to or by bank.

5. The facts of the case do not invite the application of the Clause (a) as this is not a case of a deposit of money but purely a case of a loan advanced to a co-operative society. Clause (d) of Section 2(9) refers to a loan advanced by a co-operative society. A loan by a co-operative society is therefore excluded from the definition of 'loan'. This clause does not exclude a loan advanced to a co-operative society. Reliance however is placed on the latter part of Clause (b) of the definition. Admittedly the first part does not apply because the cooperative society in question was not registered under the Societies Registration Act 1860 It is a co-operative society registered under the Bombay co-operative Societies Act 1925 But the contention is that the Bombay Co-operative Societies Act is an enactment relating to a public religious or charitable object and that therefore the second part of Clause (b) of the definition excludes a loan granted to a co-operative society from the definition of 'loan'. Now it is contended that the preamble of the Bombay Co-operative Societies Act, 1925, shows that it was found expedient to facilitate the formation and the working of co-operative societies for the promotion of thrift self-help and mutual aid among agriculturists and other persons with common economic needs so as to bring about better living better business and better methods of production and for that purpose to consolidate and amend the law relating to co-operative societies. No doubt the object of enacting the Bombay Co-operative Societies Act 1925 is to promote thrift self-help and mutual aid among agriculturists and other persons etc. In that sense the object is certainly a laudable one and may be said to be a public object. But the Act itself relates to Co-operative Societies. This is clear from the preamble itself which provides that for the purpose of promoting thrift self-help etc. it is expedient to consolidate and amend the law relating to co-operative societies. The words relating to a public religious or charitable object are found in Clause (b) of the definition. The enactment itself must therefore relate to a public religious or charitable object if it is to come within the ambit of Clause (b). In other words the subject-matter of the enactment must be a public religious or charitable object and it is not sufficient if the object of the enactment is public religious or charitable. The subject matter of an enactment may be of various kinds. The subject matter may be police, justice, prisons public health relief of the disabled, education, libraries forests, fisheries, money-lending taxes on animals, price controls, weights and measures gas boilers electricity stamp duties fees and so on. Some of these may be public objects hut it cannot be said that prisons and boilers etc. are public objects. There can be no doubt that the object of all Indian enactments is generally a public one. But that does not mean that the enactments relate to a public object. We must therefore recognise the clear distinction between the object of an enactment and its subject matter. The enactment relates only to its subject matter and not to its object.

6. If this distinction is not lost sight of it would be clear that the Bombay Co-operative Societies Act 1925 does not relate to a public religious or charitable object although the said Act is to attain a public object namely encouragement of thrift and self-help amongst the agriculturist etc. In this view Clause (b) would not exclude a loan lo the Cooperative Society from the definition of loan. This is also clear from Clause (d) which provides that a loan advanced by a co-operative society is not a loan for the purpose as defined in the Bombay Money-Lenders Act 1916 The Legislature therefore dealt with the question whether loans advanced by a cooperative society should be excluded from

the definition of loan. The Legislature in Clause (d2) provided that a loan to or by an insurance company should be excluded from the definition of loan. But when it came to co-operative societies it enacted Clause (d) in a slightly different manner providing that only a loan advanced by a co-operative society is excluded from the definition. When the Legislature enacted Clause (e) it excluded loans to or by bank from the definition of loan. The Legislature was dealing with the question whether loans to or by certain institutions should be excluded and in the cases of certain institutions it provided that loans to or by these institutions should be excluded from the definition of loan. But when it came to the institution of co-operative societies it merely provided that a loan advanced by a co-operative society should be excluded. The Legislature must have deliberately omitted the words to or before the words by when dealing with co-operative societies. This makes it quite clear that a loan advanced to a co-operative society was not intended by the Legislature to be excluded from the definition of loan.

7. It is however contended by the learned Counsel for the respondent that the sub-section which defines loan must be construed liberally in favour of the subject. If there is any ambiguity in the definition it must be construed in favour of the subject. But in our opinion there is no ambiguity in the meaning of Clause (b) which defines loan. If there is no ambiguity in the definition of loan there is no question of strict or liberal construction because only one construction is possible.

8. We, therefore, differ from the view taken by the learned Magistrate that a loan advanced to a co-operative society is excluded from the definition of 'loan' and we hold that even in respect of such a loan Section 18 of the Bombay Money-Lenders Act 1946, is applicable, and a person who contravenes Section 18(2) of the said Act in respect of a loan advanced to a co-operative society would be guilty under Section 34 of the same Act.

9. We however find that the prosecution did not lead any evidence as to the fact of the contravention of Section 18(2) of the Bombay Money-Lenders Act by the respondent. The complainant was not examined and no other evidence was led. The learned Government Pleader has not been able to show that any evidence was adduced on behalf of the prosecution. But he requests that this Court should order a remand of the case. It was the duty of the prosecution to lead all evidence before the learned Magistrate before he was asked to pronounce a judgment. Once the prosecution fails to avail itself of the opportunity of adducing evidence it cannot have a second opportunity. We therefore see no reason to order a remand of this case.

10. Although we differ from the learned Magistrate on the question of law there is no reason to set aside the order of actual passed in favour of the respondent. The appeal is therefore dismissed.