Supreme Court of India
State Of Gujarat & Anr vs Acharya D. Pandey & Ors on 12 October, 1970
Equivalent citations: 1971 AIR 866, 1971 SCR (2) 557
Author: K Hegde
Bench: Hegde, K.S.

PETITIONER:
STATE OF GUJARAT & ANR.

Vs.

RESPONDENT:
ACHARYA D. PANDEY & ORS.

DATE OF JUDGMENT:
12/10/1970

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
SIKRI, S.M.

CITATION:
1971 AIR 866 1971 SCR (2) 557
1969 SCC (3) 349

ACT:
Bombay Public Trust Act 1950 ss. 35(1), 66-Scope of-Mens Rea-If necessary ingredient.

HEADNOTE:
On the allegations, that the 1st accused, who was the Acharya of a public trust withdrew monies from the trust fund to meet his tax liabilities, that the other accused as trustees connived at the contraventions of the law, and that the monies were reimbursed later, the accused were convicted under ss. 35(i) and 66 of the Bombay Public Trust Act, 1950. In appeal, the High Court acquitted, the accused, holding that the requisite mens rea was not proved against the 1st accused, and that the other accused were not trustees at the time of the alleged offence. Dismissing the appeal,
HELD : The broad principles accepted by Courts with regard to the question whether a crime can be said to have been committed without the necessary mens rea. are : Where an offence is created by statute, however, comprehensive and unqualified the language of the statute, it is usually understood as silently requiring that the element of mens rea should he imported into the definition of the crime, unless a contrary intention is expressed or implied. In

other words, the plain words of statute are read subject to a presumption, which may be rebutted, that the general rule of law that no crime can be committed unless there is mens rea has not been ousted by the particular enactment. Mens rea means some blameworthy mental condition, whether constituted by knowledge or intention or otherwise. But this rules has several exceptions. [560 H]

The principal classes of exceptions may be reduced to three. One is a class of acts which are not criminal in any real sense, but are acts which in the public interest prohibited under a penalty. Another class comprehends some, and perhaps all, public nuisances. Lastly, there may be cases in which although the proceeding is criminal in form, it is really only a summary mode of enforcing a civil right. But except in such cases as these, there must in general be guilty knowledge on the part of the defendant, or of some one whom he has put in his place to act for him, generally or in the particular matter in order to constitute and offence. The present case falls within the first category [561 G]

Section 35(1) of the Bombay Public Trust Act creates a quasi-criminal offence. It is a regulatory provision. It is enacted with a view to safeguard the interest of the public regarding trust money. The offence in question is punishable only with fine. The conviction under that does not carry any stigma. The language of the provision appears to make its contravention an absolute liability. Consequently the requirement of mens rea cannot be read into it. [563 A]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeals Nos. 2 to 12 of 1968.

Appeals by special leave from the judgments and orders dated June 25, 1965 and February 20, 1967 of the Gujarat High Court in Cr. Appeals Nos. 828 of 1965 etc. Urmila Kapoor and S. P. Nayar, for the appellants. V. K. Sanghi, for the respondents.

The Judgment of the Court was delivered by Hegde, J. These appeals arise from two complaints field by the Charity Commissioner, State of Gujarat under s. 35(1) read with s. 66 of the Bombay Public Trust Act, 1950 (which will hereinafter be referred to as the Act). In those complaints 10 accused were proceeded against. It was said that they were the trustees of two trusts known as "Shree Swaminarayan Mandir" and "Narayan Mandir". The 1st accused in both those complaints was the Acharya, the 10th was said to be the Mahant and the other accused the associated trustees at the relevant time. It was said that all these trustees were appointed under two different schemes framed by the High Court of Bombay. The trial court convicted the accused but in appeal the High Court of Gujarat acquitted all of them. It held that there is no proof to show that accused 2 to 10 were the trustees of the institutions at the time the alleged offence took place. It allowed the appeal of the 1st

accused on the ground that the prosecution has failed to prove the required mens rea on his part. The State of Gujarat and the Charity Commissioner have brought these appeals after obtaining special leave from this Court.

In the first complaint the allegation is that the 1st accused withdrew from the trust funds in Samvat year 2014 a sum of Rs. 30277/53 for meeting his income-tax liability and that he reimbursed that amount only in Samvat year 2018. The allegation against the other accused is that they allowed the 1st accused to utilise that amount in contravention of the law. In the second complaint the allegation is that the 1st accused withdrew a sum of Rs. 40653/56 P. in the Samvat year 2015 again for meeting income-tax liability and that he reimbursed that amount also in the Samvat year 2018 and that the other accused connived at the contravention of the law by the 1st accused. Accused 2 to 10 pleaded that they were not the trustees of the institutions concerned during the Samvat years 2014 and 2015 and nor were they aware of the withdrawals and as such, they are not guilty of any offence. The 1st accused admitted the withdrawals mentioned in the complaints but his case was that the withdrawals were made from his Hathu Khata, a Khata built up by him and his ancestors and he has put back that amount., So far as accused 2 to 10 are concerned there is absolutely no evidence against them. The only witness examined on be-- half of the complainant namely the Legal Advisor of the Charity Commissioner did not give any evidence against them. No material was placed before the court to show that they were the trustees of the trusts in question during the Samvat years 2014 and 2015. This is not a case where a trustee has failed to deposit the amounts in his hands but is a case of unauthorised withdrawals. There is no evidence to show that accused 2 to 10 knew about those withdrawals even if we assume that they were the trustees during the Samvat years 2014 and 2015. Hence the case against them must necessarily fail.

Now coming to accused No. 1 his case is that he withdrew the amount from his Hathu Khata which Khata according. to him is his private Khata. There is no contra evidence. The complainant's witness admitted during his cross-examination that accused No. 1 kept a huge sum with the trust and that no interest was given to him in respect of that amount. It is not possible to come to the conclusion, on the basis of the evidence of P.W. I that accused No. 1 had withdrawn any amount belonging to the trust. In order to prove the case put forward in the complaints, reliance was sought to be placed on a letter said have been sent by the accused to the Charity Commissioner. The original letter was not produced; only an alleged copy of the same was put on record. No witness has proved the letter said to have been written by accused No. 1, nor is there any evidence to show that the copy produced is a true copy of the letter said to have been sent by accused No. 1. We are asked to infer the guilt of the accused No. 1 on the basis of the statement made by him under s. 342, Cr.P.C. We cannot split that statement into various parts and accept a portion and reject the rest. We have to either accept that statement as a whole or not rely on it at all. In his statement the accused pleaded that he was not guilty and if his statement is taken as a whole, it does not show that he was guilty of any offence. Our above conclusion is sufficient to dispose of these appeals but as the High Court has elaborately gone into the question whether the requirement of mens rea is a necessary ingredientof s. 3 5 (1), we shall proceed to examine that question.

The High Court primarily addressed itself to the question whether the court should read into s. 35 of the Act, the requirements of mens rea. Section 35(1) reads :

> "Where the trust property consists of money and cannot be applied immediately or at any early date to the purposes of the public trust the trustee shall be bound (notwithstanding any direction contained in the instrument of the trust) to deposit the money in any Scheduled bank as defined in the Reserve Bank of India Act, 1934, in the Postal Savings Bank or in a Co- operative bank approved by the State Government for the purpose or to invest it in public securities :
>
> Provided that such money may be invested in the first mortgage of immovable property situate in (any part of India) if the property is not leasehold for a term of years and the value of the property exceeds by one-half the mortgage money :
>
> Provided further that the Charity Commissioner may by general or special order permit the trustee of any public trust or classes of such trusts to invest the money in any other manner."

Assuming that the requirement of mens rea is a necessary ingredient of the offence under s. 35(1) and further that the facts pleaded in the complaint are correct then there can be hardly any difficulty in coming to the conclusion that the accused had the required intention. He is said to have withdrawn monies from the trust fund and utilised the same for his private purpose.

It may be noted that the requirement of S. 35(1) that a trustee should invest in proper securities the trust monies not required for immediate use merely emphasises an obvious duty of the trustee. Section 35(1) imposes certain penalty on the trustee if he fails to do his duty. The purpose of S. 35(1) is to safeguard the trust funds and also to guard against its misappropriation and misapplication. The Trust Act as well as S. 35(1) imposes a duty on the trustee. The language of the provision shows that the liability imposed on the trustee is absolute. The provision is regulatory provision enacted in public interest. For the contravention of S. 35(1) only a fine can be imposed and the punishment does not carry with it any stigma.

The question whether a crime can be said to have been com- mitted without the necessary mens rea has led to considerable controversy. The broad principles accepted by courts in this country as well as in England are : Where an offence is created by a statute, however comprehensive and unqualified the language of the statute, it is usually understood as silently requiring. that the element of mens rea should be imported into the definition of the crime, unless a contrary intention is expressed or 5 6 1 implied. In other words, the plain words of the statute are read subject to a presumption, which may be rebutted, that the general rule of law that no crime can be committed unless there is mens rea has not been ousted by the particular enactment. The mens rea means some blameworthy mental condition, whether constituted by knowledge or intention or otherwise. But this rule has several exceptions, as observed by Lord Evershed in Lim Chin Aik v. The Queen(1).

> "Where the subject matter of the statute is the regulation for the public welfare of a particular activity-statutes regulating the sale of food and drink are to be found among the earliest examples-it can be and frequently has been inferred that the legislature intended that such activities should be carried out under conditions of

> strict liability. The presumption is that the statute or statutory instrument can be effectively enforced only if those in charge of the relavant activities are made responsible for seeing that they are complied with. When such a presumption is to be inferred, it displaces the ordinary presumption of mens rea."
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> As long back as 1895. Wright J. observed in Sherras v.De Rutzen.
>
> "There is a presumption that mans rea, an evil intention of knowledge of the wrongfulness of the act, is an essential ingredient in every offence; but that presumption is liable to be displaced either by the words of the statute creating the offence or by the subjectmatter with which it deals, and both must be consi- dered."

It is further observed therein that the principal classes of exceptions may perhaps be reduced to three. First, is a class of acts which are not criminal in any real sense, but are acts which in the public interest prohibited under a penalty. Another class comprehends some, and perhaps all public nuisances. Lastly, there may be cases in which, although the proceeding is criminal in form, it is really only a summary mode of enforcing a civil right. But, except in such cases as these, there must in general be guilty knowledge on the part of the defendant, or of some on whom he has put in his place to act for him, generally, or in the particular matter, in order to constitute an offence. The present case, in our opinion, falls within the first category mentioned above-Section 35(1) deals with a quasi- criminal act.

(1) [1963] A.C. 160.

(2) [1895]1. Q. B. 918 5 62 This Court in Ravule Hariprasada Rao v. The State(1) ruled that unless a statute either clearly or by necessary implication rules out mens rea as a costituent part of the crime, a person should not be found guilty of an offence against the criminal law unless he has got a guilty mind. The same view was reiterated by this ,Court in State of Maharashtra v. Mayer Hans George (2) . But in both those cases this Court recognized that the language of a provision either plainly or by necessary implication can rule out the application of that presumption. Further the Court may decline to draw that presumption taking into consideration the purpose intended to be served by that provision. In fact in Ravula Harprasada Rao's case(1) this Court held that the ,liability imposed under S. 27(A) of the Motor Spirit Rationing Order 1941 is an obsolute liability. The law on this point was ,elaborately discussed by the House of Lords in Sweet v. Parsley(3). Therein it was laid down that it is a general principle of construction of any enactment which creates a criminal offence that, ,even where the words used to describe the prohibited conduct would not in any other context connote the necessity for any particular mental element they are nevertheless to be read as subject to the implication that a necessary element in the offence is the absence of a belief, held honestly and on reasonable grounds in the existence of a facts which, if true, would make 'the act innocent. In the course of his speech Lord Reid obser- ved after referring to the well known observations of Wright J. to which we have already made reference.

> "It does not in the least follow that when one is dealing with a truly criminal act it is sufficient merely to have regard to the subject matter of the enactment. One must put

oneself in the position of a legislator. It has long been the practice to recognise absolute offences in this class of quasi- criminal acts, and one can safely assume that, when Parliament is passing new legislation dealing with thise class of offences, itse silence as to mens rea means that the old practice is to apply. But when one comes to acts a truly criminal character, it appears to me that there are at least two other factors which any reasonable legislator would have in mind. In the first place a stigma still attaches to any person convicted of a truly criminal offence, and the more serious or more disgraceful the offence are greater the stigma. So he would have to consider whether, in a case of this gravity, the public interest really requires than an innocent person should be prevented from pro-

(1) [1951] S. C. R. 322. (2) [1965] 1 S.C.R. 123.

(3) [1965] 2 W. I-R. 470.

5 63 ving his innocence in order that fewer guilty men may escape."

Section 35(1) of the Act creates a quasi-criminal offence. It is a regulatory provision. It is enacted with a view to safeguard the interest of the public regarding trust money. The offence in question is punishable only with fine. The conviction under that does not carry any stigma. The language of the provision appears to make its contravention an absolute liability. Under these circumstances, we think the offence mentioned in that section is an absolute one. Consequently we cannot read into it the requirement of mens rea.

For the reasons mentioned above these appeals fail and they are dismissed.

Y.P. Appeal dismissed.