

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/CRIMINAL APPEAL (AGAINST CONVICTION) NO. 769 of 2024**

**With  
CRIMINAL MISC.APPLICATION (FOR SUSPENSION OF SENTENCE) NO.  
1 of 2024  
In R/CRIMINAL APPEAL NO. 769 of 2024**

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ASHOKBHAI BHURJIBHAI MORI @ MORE
Versus
STATE OF GUJARAT
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Appearance:
MR P P MAJMUDAR(5284) for the Appellant(s) No. 1
MS JIRGA JHAVERI, APP for the Opponent(s)/Respondent(s) No. 1
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**CORAM:HONOURABLE MS. JUSTICE S.V. PINTO**

**Date : 19/04/2024**

**ORAL ORDER**

1. The appellant has preferred the present appeal under section 351 of the Code of Criminal Procedure, 1973 against the order of conviction dated 27.3.2024 rendered by learned 9<sup>th</sup> Additional Sessions Judge, Vadodara in Sessions Case No.165 of 2020.

2. The short facts giving rise to the present appeal are that at present, the appellant is serving as Police Inspector at Jawaharnagar Police Station, Vadodara. It is the case of the prosecution that on 20.3.2024, a notice

below Exh.47 was issued to the Police Inspector, Jawaharnagar Police Station by the learned 9<sup>th</sup> Additional District & Sessions Judge, Vadodara in a sessions trial in Sessions Case No.165 of 2020 arising out of the FIR being CR I - No.223 of 1990 registered with Jawaharnagar Police Station, Vadodara for the offences punishable under sections 147, 148, 149, 307, 325, 324, 323, 427, 506 and 188 of the Indian Penal Code, 1860 and Section 135 of the G.P.Act to show cause as to why action may not be taken against the appellant under section 349 of the Code of Criminal Procedure for not producing the muddamal in the said sessions trial.

3. In pursuance of the said notice, the appellant sent a report on 27.3.2024 to the learned trial Court stating that the appellant was engaged in upcoming general election duties with the BSF personnel and, therefore, he could not remain present.

4. Learned 9<sup>th</sup> Additional Sessions Judge, Vadodara

passed the order dated 27.3.2024 below Exh.47 in Sessions Case No.165 of 2020 holding the appellant guilty for noncompliance and breach under section 349 of the Code of Criminal Procedure and the appellant herein is sentenced to undergo simple imprisonment for seven days.

5. Being aggrieved by the same, the appellant has preferred the aforesaid Criminal Appeal before this Court.

6. By way of preferring the present appeal, the appellant has mainly contended that the learned trial Court has failed to appreciate the report sent by the appellant to the learned trial Court on 27.3.2024. It is further contended that the learned trial Judge has not appreciated the said report in its proper perspective and in fact, there was no appreciation of the said report in the order and hence, the impugned order of conviction is required to be reversed.

7. Mr.Panthil Majmudar, learned advocate for the appellant has argued that the appellant had not refused to

comply to produce the muddamal, but has filed the report dated 27.3.2024 showing the difficulty for not producing the muddamal. It is further submitted that the appellant has not committed breach of section 349 of the Code of Criminal Procedure as the appellant had not refused to produce the muddamal. Learned advocate has further submitted that no reasonable opportunity has been given to the appellant by the learned trial Court and the appellant has never refused to produce the muddamal. That in fact, the appellant has produced the muddamal before the learned trial Court and the appellant is fully aware that he being a responsible police officer is duty bound to produce the muddamal. That there was no intention on the part of the appellant to defy the order of the learned trial Court but no opportunity has been given and lastly, Mr.Majmudar has requested this Court to allow the present appeal.

8. On the other-hand, Ms.Jirga Jhaveri, learned APP has submitted a report of Mr.J.C.Kothia, Deputy Police Commissioner, Zone-01, Vadodara City dated 19.4.2024

and has supported the order passed by learned trial Court. She argued that learned trial Court has rightly believed that the appellant has failed to produce the muddamal and hence there is a breach of provisions of section 349 of the Code of Criminal Procedure. Lastly, learned APP has requested this Court to dismiss the present appeal.

9. This Court has heard Mr.Panthil Majmudar, learned advocate for the appellant and Ms.Jhaveri, learned APP for the respondent State.

10. This Court has minutely gone through the impugned judgment rendered by learned trial Court as well as the material produced before this Court.

11. In the present case, the short question that falls for consideration of this Court is whether the appellant has committed a breach of the provisions of section 349 of the Code of Criminal Procedure or not ?

12. In the backdrop of the aforesaid factual position, it would be fruitful to refer to the provisions of section 349 of the Code of Criminal Procedure which read as under.

“Section 349 : Imprisonment or committal of person refusing to answer or produce document.

- If any witness or person called to produce a document or thing before a Criminal Court refuses to answer such questions as are put to him or to produce any document or thing in his possession or power which the Court requires him to produce, and does not, after a reasonable opportunity has been given to him so to do, offer any reasonable excuse for such refusal, such Court may, for reasons to be recorded in writing, sentence him to simple imprisonment, or by warrant under the hand of the Presiding Magistrate or Judge commit him to the custody of an officer of the Court for any term not exceeding seven days, unless in the meantime, such person

consents to be examined and to answer, or to produce the document or thing and in the event of his persisting in his refusal, he may be dealt with according to the provisions of Section 345 or section 346.”

13. On a plain reading of the provisions of section 349 of the Code of Criminal Procedure, it appears that the Court must be satisfied that : (a) the witness is called to produce a document or thing before a criminal Court; (b) the witness refuses to produce the document or thing in his possession or power which the Court requires him to produce; and (c) despite reasonable opportunity, the witness fails to offer any reasonable excuse for such refusal. It is required to be noted that after having satisfied the above referred conditions, the Court, after recording reasons, may sentence a witness for a term not exceeding seven days simple imprisonment, unless in the meantime, the witness produces the document or thing. It is also pertinent to note that upon persistent refusal by the witness, the Court is empowered to initiate action for contempt against such

person as per the procedure laid down in section 345 of Code of Criminal Procedure. It is, therefore, manifestly clear that Section 349 of the Code of Criminal Procedure presupposes that the document is in power and possession of the witness who is required to produce the same. In the present case, it is on record that the FIR was registered on 30.12.1990 at 1.30 hours before the Jawahar Police Station, Vadodara and the muddamal was seized by the then officer who was the Investigating Officer at Jawaharnagar Police Station at the relevant time. It is also on record that as per the report of Mr.J.C.Kothia, Deputy Police Commissioner, Zone-01, Vadodara City dated 19.4.2024 that the appellant was on duty on 21.3.2024 and has remained present before the Mangrol Court, Surat; the appellant has also discharged his duties in police bandobast on 22.3.2024 in connection with the 10<sup>th</sup> and 12<sup>th</sup> Standards examinations and thereafter, the appellant was engaged in general election duties. In the said report, it is also stated that Court duty staff Sureshbhai Kalubhai, Buckle No.3040 remained present before the learned trial Court on 27.3.2024, but the



learned trial Court refused to receive the muddamal and insisted that the appellant herein shall remain present before the learned trial Court along with muddamal. It is also reported that the muddamal in question has been produced before the learned trial Court. Annexure-C to the appeal i.e. the report dated 27.3.2024 submitted by the appellant to the learned trial Court clearly reveals that the appellant was engaged in other works as assigned to him and also in absence of any material on record to suggest that the appellant appellant is deliberately not producing the same, action under section 349 of the Code of Criminal Procedure cannot be initiated.

14. It is also a settled legal position by catena of decisions of the Honourable Apex Court that the provisions of Section 349 of the Code of Criminal Procedure being punitive in nature should not be exercised lightly and should be enforced sparingly and only in a case where there is deliberate refusal on the part of the person called upon by the criminal Court to answer any question or to produce the

document or thing being in his possession and fails to show any reasonable excuse for not doing so. In the present case, it is not in dispute that the appellant has submitted the report on 27.3.2024 justifying his stand indicating that he never intended to defy the order of the Court.

15. In view of the aforesaid discussion, the question is answered in the negative and consequently, the appeal succeeds and the same is allowed. The impugned order dated 27.3.2024 passed by the learned 9<sup>th</sup> Additional Sessions Judge, Vadodara passed below Exh.48 in Sessions Case No.165 of 2020 is quashed and set aside.

16. In view of the above, Criminal Misc. Application (for suspension of sentence) No.1 of 2024 in R/Criminal Appeal No.769 of 2024 also stands disposed of.

H.M. PATHAN

**(S. V. PINTO,J)**