



ZAHIRA HABIBULLA SHEIKH AND ANR. V. THE STATE OF GUJARAT AND OTHERS.

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PARTIES

- Zahira Habibulla Sheikh and Anr.
(PLAINTIFF)

- State of Gujarat and Others.
(DEFENDANT)

CITATION - (2004) 4 SCC 158, 2004 Cri
LJ 2855

COURT - Supreme Court Of India

BENCH - Doraiswamy Raju, Dr. Arijit
Pasayat , JJ.

BACKGROUND OF THE CASE

A group of protesters reacted violently to a well-known bakery called as best bakery, apparently in retaliation for the Godhra attack. The first petitioner and herself the direct witness, Zahira Habibullah, observed the deaths of eleven members of her family and three bakery employees. However the trial courts and high courts didn't entertained her proceedings due to lack of direct evidences.

Zahira subsequently lodged a petition with the National Human Rights Council claiming why and how influential and mighty politicians threatened her to deliberately change her statements and that was the reason of her aggressive attitude towards judiciary.

Invoking Article 32 of the Constitution , A Special Leave Petition was filed at the

Supreme Court of India, by Zahira along with support of Citizens for justice and peace and NHRC.

ISSUES

- Whether further applications filed by the state government to initiate a second trial based on additional proofs that falling under section 391 of the CrPC is valid?
- The prime issues involved are **Section 311** – Power to summons evidence and examination of person and **Section 396** – The Power of disposal of an appeal.

PROSECUTION CONTENTION

Zahira, was the main witness of this case, she was the one who was fighting for the rights of people in which 11 were of her family, who died on 2nd April, 2002 in Bakery. She told the authorities that she was on the terrace at the time of the attack and had thus couldn't see the attackers. The learned counsel of the appellant, Mr. Sibal, contended the court continuously supported the accused side and further postulated that the High Court didn't followed the enforceability of Sec. 391 as need or desirability to resort to the Sec. 311 and concluded that appeal can be accepted primarily on the basis of the documentary evidence brought before the high court with regards to Sec. 385 (2) would exhibit Sec. 391 by nullifying very object of the respective code. As a rule, sessions court as well as higher court ignored her contentions and excluded all 21 defendants which were accused in the case by judgment dated June 27, 2003, citing the principle of lack of proof.

She strongly insisted that a fair trial should be conducted again because :-



→ Almost all the of witnesses changed their statements to opposite immediately after filing of suit. This could most possibly done due to coercion by local political governing leader pressures and threats. Even after this, the public prosecutor did nothing to protect the witnesses or keep the court updated. She herself was pressurised by political leaders as Gujarat's political reputation could be defamed and also Muslims were treated as minorities at that time.

DEFENCE CONTENTION

The denial of charge sheet admissibility has indeed been given no excuse; however, the indistinguishable reason is that the witness statements were already submitted in court in another suit, which is not a lawful parameter. Mr. Sushil Kumar, senior learned counsel, argued it is incorrect to say that the implementation of Sec. 391 was denied and that the inquiry was futile. The section was accepted and dismissed on the merits, and the affidavits were filed on the merits too. Mr. Mukul Rohatgi, Add. Solicitor General representing State submitted in appeal that the High Court of Gujarat gave verdict in terms of Sec. 311 and 391 of the code and further said that the transfer of case to another jurisdiction will be display that Gujarat courts are incompetent machinery and cannot deliver justice. KTS Tulsi, Senior Counsel for accused denied that there was any kind of illegal political threatening in the said matter due to lack of conclusive evidence.

RULE OF LAWS APPLICABLE

¹ 1967 SCR (3) 415

² 2003 SCC (cri) 641

³ 1980 AIR 1632

1. **Sec. 173(8) of CrPC:** *“Nothing in this section is intended to preclude further investigation of any criminal offence after a complaint is filed in the subsection (2) has been forwarded to the Magistrate and, If police station receives further evidence during such an investigation. This section empowers the police to re-investigate the case despite the fact that the court has taken cognizance of the matter.*
2. **Sec. 311 of CrPC:** *“Any Court may, at any level of any inquiry, trial proceeding under this Code, summon any individual as a witness”.*
3. **Sec. 406(1) of CrPC:** *“Whenever it is made to appear to the Supreme Court that an order under this section is expedient for the ends of justice, it could direct that any specific case or appeal be transferred from one High Court to another High Court”*

AUTHORITIES CITED

- Jamatraj Kewalji Govani v. The State of Maharashtra¹
- Amar Singh v. Balwinder Singh and Ors.²
- Gurcharan Das Chadha v. State of Rajasthan³
- State of Punjab v. Jagdev Singe Talwandi⁴
- Ram Chander v. State of Haryana⁵

JUDGEMENT

⁴ 1984 SCR (2) 50

⁵ 1983 AIR 817



The Gujarat High Court refused the case's retrial, citing that under power granted in Cr.Pc retrial is no longer necessary, The court also denied the National Human Rights Commission's appeal for a stay of proceedings, which is currently pending before the Supreme court. The Supreme Court ordered the Bakery case to be retried, reinvestigated, and transferred to the Bombay High Court on April 12, 2004. Providing the reasoning that the facts of the case show that retrial is inevitable.

The Supreme Court ruled that if it is satisfied that a transfer is needed in the public interest, it can order it even if the party has not sought it. As a result, the Court not just considered a re-trial but also shifted the jurisdiction of matter to Maharashtra, arguing that trial has been illegally conducted due to hostile witnesses and the Public Prosecutor's lack of action.

CRITICAL ANALYSIS AND COMMENT

The part of a witness is imperative in any trial. So this judgment has pointed out as how the importance of witnesses lacks integrity sometimes. In **Mohanlal Shamji Soni v. Union of India, 1991**⁶, the court upheld that in cases where the judge thinks certain evidences case are missing, he can exercise his right under section 311 of the CrPC, to examine witness at any level in the suit. The primary sections of CrPc applied in the case 311 and 391. Which concludes that court is not restricted to any restrictions.

The power to exercise and examine is directed to the court and not the prosecution

⁶Mohanlal Shamji Soni v. Union of India 1991 AIR 1346, 1991 SCR (1) 712

⁷ Rajeswar Prosad Misra vs State Of West Bengal & Anr 1966 SCR (1) 178

and defence and apply only to protect justice and public interest. Sec 391 stands as an exception to the general.⁷ Additionally, the appeal should be reviewed or dismissed in light of new and strong proofs. The primary aim is to prevent a convicted criminal from fleeing due to a lack of evidence or misunderstanding of the proceedings, or to vindicate an innocent person wrongfully accused⁸.

For an effective justice delivery system, the due process of law must be followed. Supreme Court judges asked the Gujarat Chief of Police and the Gujarat Chief Secretary to appear in court and justify their conduct.

CONCLUSION

'Best Bakery case' the landmark judgement in the Indian judicial history. It had a lot of sensitive issues that it presented itself with communal violence, hearsay and witnesses. Media also put this controversy in huge limelight. The judicial system handled this case very well by treating the case with finesse and maturity. The judges appeared neutral in the case, despite considerable political and religious pressure that dominated it. They analysed the case on its own grounds, not on the basis of its reputation.

The burning of the Godhra train, which carried over 50 Hindu tourists, triggered the violence in 2002. Members of the Muslim community is also said to have set fire to the bakery. The riots' contentious nature indicated that the Narendra Modi government was involved in. The Supreme Court, on the

⁸ Ram Bhau v. State of Maharashtra AIR 2001 SC 2120



other hand, formed a Special Investigative Team in 2012.

A court's trials include the true image. And if such events swayed judicial laws in a purely political manner, the constitution and other regulations would be stranded. Even though the judiciary is sovereign, political-driven leaders are going to pose a serious threat to the framework, causing irreversible harm. Courts should take this landmark judgement as a precedent of learning and make sure no matter what justice should prevail ultimately.

