

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL REVISION APPLICATION NO. 362 of 2011

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

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Approved for Reporting	Yes	No

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KANTIBHAI PUNAMBHAI PARMAR

Versus

STATE OF GUJARAT

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Appearance:

BAILABLE WARRANT UNSERVED for the Applicant(s) No. 1

MR PUNAM G GADHVI(3724) for the Applicant(s) No. 1

MR ROHAN RAVAL, APP for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 29/04/2026

JUDGMENT

- 1) By way of present revision application under Sections 397 and 401 of the Code of Criminal Procedure, 1973, the applicant has sought following relief:-

"(b) To call for all the records and proceedings of Criminal Appeal No.03/2010 from the Court of Learned Sessions Judge at Nadiad and be pleased to quash and set aside the conviction, sentence and compensation awarded vide judgment and order dated 17/12/2009 in Criminal Case no.8548 of 2004 passed by the Learned Add. Magistrate at Nadiad and against that appeal No. 03 of 2010 has been preferred by the applicant who was confirmed by the

learned Add. Sessions Court in Criminal Appeal No.03 of 2010 on dated 04th August, 2011 and be pleased to acquit the applicant."

- 2) Brief facts of the present case are that on 02.05.2004, the applicant – accused was on duty at ST Workshop at that time Vinubhai Babubhai had suspicion that the applicant – accused is under alcohol inebriation and hence he informed the Superintendent of Divisional Workshop i.e. Hitendrabhai who checked the applicant who found to be under alcohol inebriation that too during his duty. Therefore, the applicant was taken to police station where Hitendrabhai lodged the FIR against the applicant being Prohibition C.R.No.615 of 2004 for the offences punishable under Sections 66(1)(b) and 85(1)(3) of the Prohibition Act. After completion of investigation, charge-sheet came to be filed against the accused under Sections 66(1)(b), 85(1)(3) of the Prohibition Act. Thereafter, Criminal Case No.8548 of 2004, was registered, and trial was commenced. The learned Magistrate has recorded the plea of the accused to which the accused pleaded not guilty of the charge. Therefore, the prosecution has examined seven prosecution witnesses and tendered eight documentary evidence. Thereafter, further statement of the accused under Section 313 of the Code of Criminal Procedure was recorded, wherein, the accused denied the entire case of prosecution. Thereafter, after hearing the

arguments of the respective Advocates and appreciating the evidence led by the prosecution, the learned 4th Judicial Magistrate First Class, Nadiad, vide judgment dated 17.12.2009, came to the conclusion that the applicant is guilty for offence punishable under Section 66(1)(b) of the Bombay Prohibition Act and simultaneously, the applicant was acquitted from the offence punishable under Section 85(1)(3) of the Bombay Prohibition Act. The learned Magistrate was pleased to sentence the accused to undergo simple imprisonment for one month and directed to pay fine of Rs.100, in default, further to undergo seven days of simple imprisonment. Feeling aggrieved by the same the applicant has filed Criminal Appeal No.03 of 2010 before the learned 2nd Additional Sessions Judge, Nadiad, which came to be dismissed vide judgment and order dated 04.08.2011, confirming the conviction of the applicant passed by the learned trial Court. Hence, the applicant has filed the present revision application.

- 3) The learned Advocate for the applicant has submitted that the impugned judgments are contrary to the law and both the Courts failed to appreciate the evidence. He has further submitted that the Courts below ought to have considered the fact that the complainant has not approached the Court with clean hands and there was basic improbability and infirmities int

eh prosecution evidence and there is violation of Rule 4 of the Bombay Prohibition (Medical Examination and Blood Test Rules, 1959 (which shall hereinafter be referred to as "**the Rules**" for short) as per which the Medical Officer is expected to follow the same while collecting the blood sample as well as the Form – A filed by the Doctor is defective. He has further submitted that there is insufficient evidence to connect the applicant – accused with the present offence since there is breach of mandatory provision. Hence, he has requested to allow the present revision application.

- 4) Learned APP for the State has opposed the present application and submitted that both the Courts below have properly appreciated the evidence produced on record and considering the concurrent findings no interference of this Court is required. Hence, he has requested to dismiss the present revision application.
- 5) Having heard the learned Advocates for the respective parties and perusing the record it appears that the main contention of the learned Advocate for the applicant is that there is breach of mandatory provisions of Rule 4 of the Rules and submitted that the same are mandatory. In case of non compliance of provisions of Rule 4 the accused is required to be given benefit of doubt or exonerated from the charges levelled against him. If

we perused the order and reasons assigned by both the Courts and evidence led by the prosecution before the learned trial Court the PW-7 Dr.Ramchandra Ganeshmal Soni, examined at Exhibit 22, has deposed that he has examined the accused who found under the influence of alcohol. He has collected blood sample and took the thumb impression on Form-A. He has given detailed evidence qua procedure followed by him while collecting the blood sample and after collecting the blood sample the same was kept in a bottle containing anticoagulants and preservative powder. Perusing the said evidence it reveals that the bottle was sealed and the seal is mentioned in the forwarding letter and the same was sent to the FSL, therefore, it reveals that sufficient compliance of provisions of Rule 4 of the Rules is followed. As arguments of the learned Advocate for the applicant qua non compliance of the Rule 4 is not acceptable and even this Court in case of ***Avadh Bihari Amrutlal Vs. State of Gujarat***, reported in ***2000 (3) GLR 2386***, held that the provisions of Rule 4 of the Rules are not mandatory but directory in nature.

- 6) Further, perusing the record other documentary evidence at Exhibit 23 to 27 are sufficient for the compliance of the Rules. The complaint at Exhibit 18 which is substantiated by the oral evidence of PW-4 Hitendrabhai Harshadbhai Prajapati at Exhibit 18. In the FSL Report 0.05% of alcohol is found and hence the

offence under Section 66(1)(b) of the Act is made out. Merely the panch witnesses are turned hostile is not a ground to acquit the accused. Even the accused failed to show pass or permit of liquor and found under intoxication of alcohol from the public place. The accused also failed to produce contrary evidence or rebut the evidence lead by the prosecution. Further the learned trial Court as well as learned Sessions Court have rightly come to the conclusion that as the accused found in ST Workshop within limited premises the accused is exonerated from the offence under Section 85(1)(3) of the Act.

- 7) Furthermore, while exercising jurisdiction under Section 401 of the Code is discretionary and it is required to be used only in exceptional cases where glaring defect in the procedure and manifest error of law or there has been miscarriage of justice. Here no any such error is pointed out or no perversity is found from the reasons assigned by both the Courts. Hence, the Courts below have not committed any error in coming to the conclusion. Even in revisional jurisdiction the Court has to be more careful in reappreciating the fact or evidence as revisional jurisdiction itself does not provide reappreciation of evidence and considering the limited jurisdiction the Court cannot act as Appellate Court. Hence, no case is made out for interference with the concurrent findings of the Courts below in light of scope of the scope of

revision laid down by the Hon'ble Apex Court in ***Amit Kapoor Vs. Ramesh Chander***, reported in **2012 (9) SCC 460**.

- 8) At this stage, learned Advocate for the applicant has submitted to extend the benefit of probation to the applicant. However, this Court is of the opinion that as per Section 104(A) of the Gujarat Prohibition Act, the Probation of Offenders Act shall not apply to any person convicted of any offence under the Prohibition Act. Hence, the benefit of probation cannot be extended to the applicant and the request of learned Advocate for the applicant is not acceded to.
- 9) In wake of aforesaid conspectus, present revision application fails and stands **dismissed**. Rule is hereby discharged. The applicant – accused to forthwith surrender before the learned trial Court to serve the remaining sentence, if any.
- 10) If the applicant fails to surrender then the learned trial Court shall issue a warrant against the applicant.
- 11) Record and proceedings, if any, be sent back to the concerned Court forthwith.

ANKIT JANSARI

(HASMUKH D. SUTHAR,J)