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SLP(Crl.)No. 1776-1777 OF 2003  
ITEM No.212 Court No.9

SECTION IIA  
A/N MATTER

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No. 1776-1777/2003  
(From the judgement and order dated 10/04/2003 in CRLMA 1974/02  
& CRL.M.A.2593/02 of The HIGH COURT OF GUJARAT AT AHMEDABAD)

KANUBHAI GULABSINH PARMAR Petitioner (s)

VERSUS

STATE OF GUJARAT Respondent (s)  
( With Appln(s). for stay )  
( For Final Disposal )  
( With Office Report )

Date : 17/10/2003 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.G. BALAKRISHNAN  
HON'BLE MR. JUSTICE B.N. SRIKRISHNA

For Petitioner (s)  
M/s Ejaz Maqbool, H.Ahmadi, B.M.Mongokiya,  
Nakul Dewan, Ms.Minakshi Nag & A.Sinha, Advs.

For Respondent (s)  
Ms. Hemantika Wahi, Adv.  
Ms. Sumita Hazarika, Adv.  
Mrs. Sadhna Sandhu, Adv.

UPON hearing counsel the Court made the following  
O R D E R

Heard the learned counsel for the parties for half  
an hour.

Leave granted.

The appeals are disposed of.

( Y.P. Dhamija ) (Veera Verma )  
AR-cum-PS Court Master  
Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 1312-1313 OF 2003  
(Arising out of SLP(Crl.) Nos. 1776-1777 OF 2003)

Kanubhai Gulabsinh Parmar & Appellant

Vs.

The State of Gujarat & Respondent

O R D E R

Leave granted.

The appellant is the 4th accused in a Criminal case pending before the Judicial Magistrate, First Class, Muli in Gujarat. The appellant filed a petition under Section 482, Cr.P.C. before the High Court alleging that the complaint filed against him did not disclose any offence against him and, therefore, the proceedings have to be quashed. The High Court dismissed the application and hence this S.L.P.

Pursuant to the complaint filed against the appellant and others, a charge was framed under Sections 188 and 430 IPC. The charge is to the following effect:

"Offence under Sections 188, 430 of I.P.C. in the manner that notification bearing No. MJS-III-V-10(2)/2000 dated 16.10.2000 was issued by the Collector, Surendranagar for reserving the stock of water for potable use, stored in the small and big lakes/Sim lakes/irrigation schemes etc. under the Panchayat Department of Surendranagar District and under the Irrigation Department of the State Government. That accused Nos. 1 to 3 committed breach of the said notification on 14.12.2000 by preparing small lane (NIK), drew the water of Nayaka Dam through these small drainage to their wells and then used the said water from their well in their fields for agricultural purpose. That accused No. 2 Narendrasinh Kanubha drew water of Nayaka Dam into his well through small lane (NIK) and took the said water through the pipeline in the fields bearing Survey Nos. 608 and 451 in occupation and possession of accused Nos. 4 and 5 and thereby they committed breach of notification issued by the Collector, Surendranagar and by reducing the stock of water they committed an offence. Therefore, this charge-sheet is submitted for doing justice."

In order to constitute an offence punishable under Section 188 IPC., there must be disobedience of an order promulgated by a public servant lawfully empowered to do the same. The offence punishable under Section 430, I.P.C. relates to the commission of mischief by diverting water from some irrigation work causing diminution of the supply of water which is intended to be used for agricultural purposes or for food and drinking purposes of human beings and animals.

The District Magistrate, Surendranagar, issued a notification on 14.10.2000 prohibiting the drawing of water from various dams including Nayaka Dam, except for potable purposes. The case sought to be made against the present appellant is that he violated the said notification by drawing water from Nayaka Dam for agricultural purposes. The complaint was lodged with Muli Police Station by a Revenue Circle Officer stating that persons mentioned in the complaint were drawing water from Nayaka Dam for irrigating their agricultural lands. The appellant herein was not originally shown as an accused, but during the course of the investigation, the appellant was implicated as accused No. 4. There is no allegation of any conspiracy being hatched by all the accused. In the complaint, there are no allegations against the present appellant. The counsel for the appellant further submitted that the lands comprised in survey numbers mentioned in the charge-sheet, namely, Survey No. 608 and Survey No. 451 do not stand in the name of the appellant. Neither the complaint nor the charge-sheet makes any allegation regarding the present appellant. Therefore, the prosecution against the appellant is not sustainable as no offence is made out against him. As there is no allegation that the appellant has committed any act contrary to law, the proceedings against him are liable to be set aside. Hence, we set aside the judgment of the Division Bench of the High Court and the criminal proceedings initiated against the appellant herein are quashed.

The appeals are disposed of accordingly.

& ..& & & & & & & & J.

(K.G. Balakrishnan)

& .& & & & & & & ..J.

(B.N. Srikrishna)

New Delhi,  
October 17, 2003

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