

PETITIONER:
THE STATE OF GUJARAT

Vs.

RESPONDENT:
RATILAL LALJIBHAI TANDOL AND ANR.

DATE OF JUDGMENT: 20/08/1997

BENCH:
G. N. RAY, G. B. PATTANAİK

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted.

Heard Mr. S.K. Dholakia, the learned senior counsel appearing for the appellant State of Gujarat and Mr. Sushil Kumar, the learned senior counsel appearing as amicus curiae to assist the Court in this matter. Certain observations made by the Gujarat High Court in disposing of Criminal Miscellaneous Application No.2941 in Criminal Appeal No.375/95 (The State of Gujarat Vs. Ratilal Laljibhai Tandol and Anr.) are impugned in this appeal by the State of Gujarat.

It has been submitted by Mr. Dholakia that although on the proposal initiated by the public Prosecutor for preferring appeal against order of acquittal the State Government takes the final decision, the State Government has felt that the opinion of the District Magistrate being in overall charge of the district is necessary for taking appropriate decision by State Government. Our attention has been drawn to the circular dated 23rd July, 1979 issued by the Legal Department of the Government of Gujarat being Circular No. Cri/Misc./5/78/24289/A2. It has been indicated in the said circular that the District Magistrate who is holding an important position in the District can reflect on several circumstances indicated in the circular in his report so that the Government will have the benefit of the experience and knowledge of the person who is likely to be most conversant with the local conditions and circumstances, which facts could not be shown or suggested by the Public Prosecutor or the Assistant Public Prosecutor.

Mr. Dholakia has submitted that in view of such perception of the State Government, it is decided that the proposal to prefer appeal against the order of acquittal should be routed through the District Magistrate. In the impugned observations, the High Court has given a direction that hence forward no proposal should be routed through the District Magistrate. Such direction of the High Court was not appropriate even though the High Court had anxiety that there should not be delay in preferring appeal in appropriate case.

Mr. Sushil Kumar the learned senior counsel appearing

as amicus curiae has however submitted under the Code of Criminal Procedure, the District Magistrate does not come in the picture in the decision making process regarding filing an appeal against the order of acquittal. He has submitted that there is no difficulty in getting valued opinion from any responsible officer of the State Government including the District Magistrate but for such opinion proposal to prefer appeal initiated by the Public Prosecutor is not required to be route through the District Magistrate Rule 50 of Law Officers' Rules of 1939 which is admittedly being followed even today indicates that the proposal of the Public Prosecutor is to be considered by the State Government and final decision is to be taken by the State Government. Such Rule is also in conformity with the Code of Criminal: procedure. Therefore, the High Court is justified in indicating that under the law, the proposal is not required to be routed through the District Magistrate. Mr. Sushil Kumar has also submitted that the High Court has indicated its concern flowing from the experience revealed from the large number of cases coming before the High Court that because of the procedural wrangles unnecessary delay is often committed for which some of the appeals are likely to be dismissed on the score of bar of limitation because in some cases inordinate delay may not be properly explained. Mr. Dholakia has however submitted that the High Court should have refrained from interfering with the policy decision of the State Government by indicating that the role of the District Magistrate is to be by passed altogether. Such direction of the High Court will virtually deprive the State Government to get the valued opinion of the District Magistrate for cogent reasons.

After taking into consideration the submissions of the learned counsel it appears to us that the High Court, in its anxiety to ensure that the appeals are preferred within reasonable time and avoidable delay does not occur in processing the proposal to prefer appeal, has made the impugned observations. Although we appreciate the anxiety of High Court that the appeal should be presented within reasonable time and procedural wrangles should be avoided so that unnecessary and avoidable delay do not take place, it appears to us that some of the observations of the High Court are quite strong and should have been avoided. We, therefore, modify the observations made by the High Court by deleting the directions regarding the liability of the Public Prosecutor in the event of delay attributable to Public Prosecutor. Such deletion is made by hoping that the Public Prosecutors will be alive to their duties and responsibilities and the State Government will not fail to take appropriate action against the erring Public Prosecutors. In modification of the observation of the High Court it is also directed that the concerned Public Prosecutor will initiate the proposal for preferring appeal against the order of acquittal and send such proposal directly to the Law Department of the State of Gujarat. But a copy of the proposal should also be sent by the Public Prosecutor to the District Magistrate of the concerned district so that the opinion of the District Magistrate is obtained by the State Government before final decision is taken by the State Government to prefer the proposed appeal. The State Government should issue necessary instruction to the District Magistrate that the District Magistrate would send its views on the proposal as expeditiously as practicable so that proposed appeal may be filed within the period of limitation. If such opinion of the District magistrate is not received by the appropriate Legal

Department of the State within a reasonable time, the concerned Legal Department will not wait for the response of the District Magistrate on the proposal given by the Public Prosecutor and a final decision will taken by the State Government even in the absence of opinion of the District Magistrate so that the proposed appeal is not barred by limitation. Needless to point out that the State Government should take final decision within such time frame so that reasonable time is left with the Government counsel to draw up the memorandum of appeal and to present appeal petition before the Court within the period of limitation. The appeal is accordingly disposed of. The State Government may issue appropriate directions consistent with the guideline indicated in this order. We place on record our deep appreciation of the assistance rendered by Mr. Sushil Kumar appearing as amicus curiae in this matter.

JUDIS