

**Dahya Deva Vs. the State of Gujarat**

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**SooperKanoon Citation :** [sooperkanoon.com/737368](http://sooperkanoon.com/737368)

**Court :** Gujarat

**Decided On :** Feb-23-1972

**Reported in :** (1973)14GLR184

**Judge :** D.A. Desai, J.

**Appellant :** Dahya Deva

**Respondent :** The State of Gujarat

**Judgement :**

**D.A. Desai, J.**

1. Dahya Deva, original accused in Summary Case No. 874 of 1971, on the file of the Special Judicial Magistrate, First Class, Railways, Viramgam, has filed this revision application against his conviction, for an offence under Section 104 of the Indian Railways Act, and sentence to pay a fine of Rs. 10/-, in default to suffer S.I. for one week.

2. When this revision petition was taken up for hearing, a question was raised whether this Court should entertain this revision application, at this stage, when the applicant did not choose to move the Session Judge, who, could, as well, exercise the revisional jurisdiction, conferred upon him by Section 435 of the Criminal Procedure Code. Section 435(1) of the Criminal Procedure Code provides that the High Court or any Sessions Judge may call for and examine the

record of any proceeding before any inferior Criminal Court situate within the local limits of its or his jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior court, etc. A bare perusal of Section 435(1) will show that concurrent revisional jurisdiction is conferred upon the High Court and Session Judge. The hierarchy of Courts envisaged in Section 6 and Section 6-A of the Criminal Procedure Code would show that the High Court is at the apex and the courts of the Magistrates at the bottom and in between there is the court of Session. Therefore, where an order of conviction is recorded by the Magistrate and the order is not appealable under Chapter XXXI of the Criminal Procedure Code, it would be open to the aggrieved party to move the High Court or the Sessions Judge to exercise its or his revisional jurisdiction. It is equally true that revisional jurisdiction is conferred both on the High Court and the Sessions Judge. A question is raised by Mr. Shah that, if revisional jurisdiction is conferred both on the High Court as well as the Sessions Judge, why should there be any obligation upon an aggrieved person first to move the Sessions Judge and then to move the High Court. Mr. Shah, drawing his support from one of the observations of N. G. Shelat, J., as he then was, in *Suraj Mohan Babu Mishra v. State of Gujarat-VIII G.L.R. 974*, urged that no useful purpose would be served by compelling a person first to move the Sessions Judge to exercise his revisional jurisdiction, because, in the event, if he is satisfied that the order sought to be revised is illegal, incorrect or improper or there is any illegality committed in the proceeding in which the order is recorded, the Sessions Judge has no power finally to decide the same and he can act, as provided by Section 438 of the Criminal Procedure Code, namely to report the case for the orders of the High Court, simultaneously making a recommendation that the sentence or the impugned order be reversed or altered and pass consequential orders. Mr. Shah urged that the High Court, while exercising the revisional jurisdiction, has the powers of the Court of Appeal, as provided by Section 439 of the Criminal Procedure Code, and, therefore, even if aggrieved person has not taken the step to approach the Sessions Judge, there is no bar in law to the High Court entertaining the revisional application directly, without the party having first approached the Sessions Judge. Mr. Shah relied upon the ratio in *Suraj Mohan's*

case (supra).

3. The observations in Suraj Mohan's case that ordinarily the High Court would not entertain directly a revision application appears to have been made keeping in view one rule though the same has not been explicitly referred to. In Suraj Mohan's case, the order sought to be revised was made under Section 523 of the Criminal Procedure Code. A revision application was filed in the High Court against the said order without first moving the Sessions Judge. This revision application was entertained, after making two specific observations, namely, that, even if the Sessions Judge had been moved, he would not be in a position to pass any adequate orders and he would have been required to refer the matter to the High Court for having suitable orders in the matter, and that would take a lot of time and the purpose behind the claim in the petition would obviously be frustrated. The second point on which the petition appears to have been entertained is that there was no bar under any provision of law showing that an application in revision cannot lie directly to the High Court and that it must always come through the Sessions Court. A reference to any provision of law, possible means a reference to any of the provisions of the Criminal Procedure Code because, I am well nigh certain that if the attention of the court was drawn to Rule 14 in Chapter XXVI, headed 'Criminal Business' in the High Court Appellate Side Rules, the said proposition would not have been made. Rule 14 provides as under:

In the absence of special circumstances, the High Court will not entertain an application for revision where an application for revision might have, but has not, been made to a lower revisional court.

There is no reference to this rule in Suraj Mohan's case and, probably, the attention of the court appears not to have been drawn to it. I would not say that this rule would preclude the High Court from entertaining a revision application, if special circumstances are made out for by-passing the Sessions Court. But, if every applicant was to move the High Court or that it is a mere idle formality to first approach the Sessions Judge, Section 435 and 438 may be rendered nugatory. Even, ordinarily in the hierarchy of courts, if a lower court can entertain a petition, the higher court should not and would not ordinarily directly entertain it. This

ordinary rule has found recognition in Rule 14.

4. The question is should Rule 14 be paid only lip service. If an argument is to be founded that one can always move the High Court because there is no bar in law, no one would go to the Sessions Judge, because one can always avoid the time spent and the expenses involved in fighting out a litigation in one court. That was never the idea in enacting Section 435 of the Criminal Procedure Code in the language in which it has been enacted and that approach would wholly render Section 438 nugatory. Therefore, the scheme of Sections 435 and 438, read with Rule 14, must indicate that, except for special circumstances, to be alleged and prima facie established, the party, aggrieved by an order of the Magistrate, must approach the Sessions Judge, because, in respect of certain kinds of order the Sessions Judge has final powers of disposal, after examining the facts, such as the dismissal of the complaint under Section 203 of the Criminal Procedure Code or the discharge of the accused under Section 253(1) or Section 253(2), in which case, if he is satisfied that the case requires further inquiry, he can direct the Magistrate to do it. In these circumstances, the correct approach appears to me to be that if any party aggrieved by an order of the Magistrate wants to file a revision application, he must first approach the Sessions Judge. If he wants to go to the High Court directly, by-passing the Sessions Judge, Rule 14 should be complied with and, in the absence of special circumstances, the High Court would not entertain the revision application. That appears to me to be what is suggested in the observations in Suraj Mohan's case that the High Court would not ordinarily entertain a revision application directly. And that is how I understand the ratio of that case.

In this case no special reason was pointed out to me as to why the applicant did not initially move the Sessions Judge. I think, therefore, that I should discharge the rule on the short ground that the applicant must first approach the Sessions Judge and that is what Mr. A. K. Shah, the learned advocate for the petitioner, wants me to do.