

State of Gujarat Vs. Walter Paul Master

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Court : Gujarat

Decided On : Aug-20-1981

Reported in : 1982CriLJ1324; (1982)1GLR508

Judge : A.M. Ahmadi and; V.V. Bedarkar, JJ.

Appellant : State of Gujarat

Respondent : Walter Paul Master

Judgement :

ORDER

V.V. Bedarkar, J.

1. The State has come in appeal against the acquittal of the respondent, accused a police Sub-Inspector by the learned Additional Sessions Judge, Ahmedabad, in Criminal Appeal No. 194 of 1978 who was convicted by the learned Chief Metropolitan Magistrate, Ahmedabad, in Criminal Case No. 1750 of 1977 for the offence punishable Under Section 66(1)(b) of the Bombay Prohibition Act, 1949(hereinafter referred to as 'the Act') and sentenced to suffer rigorous imprisonment of one day and to pay a fine of Rs. 250/- and in default of payment of fine to undergo one month's further rigorous imprisonment,

2. The case against the respondent-accused is that on 26-5-1977 at about 0.20 hours he was found having consumed alcohol and moving in the compound of the

Town Hall at Ahmedabad He was taken to Civil Hospital, Ahmedabad, where Medical Officer Dr. (Miss) Aruna Madhusudan Joshipura examined him and certified that the accused was not under the influence of alcohol, but that he had consumed liquor. The doctor extracted S.c.c. of blood from the vein of the accused for the purpose of analysis. The Chemical Analyser who analysed the blood of the accused found that it contained. 0.1564 per cent W/V of ethyl alcohol. The accused was, therefore, charge-sheeted to the Court. The learned Chief Metropolitan Magistrate who tried the accused, ultimately convicted the accused for the offence Under Section 66(1)(b) of the Act, and sentenced him as aforesaid. He, however, acquitted the accused for the offence Under Section 85(1)(3) of the Act as he was not under the influence of alcohol. In the appellate Court, the accused was acquitted on the ground that the mandatory provisions contained in Rule 4 of the Bombay Prohibition (Medical Examination and Blood Test) Rules, 1959(hereinafter referred to as 'the Blood Test Rules') were not followed: The State has, therefore, come in appeal.

3. The learned appellate Judge considered Rule 4(1) of the Blood Test Rules, which is to the following effect:

4. (1) The registered medical practitioner shall use a syringe for the collection of the blood of the person produced before him under Rule 3. The syringe shall be sterilized by putting in boiling water before it is used for the aforesaid purpose. He shall clean with sterilised water and swab the skin surface of that part of such person's body from which he intends to withdraw the blood. No alcohol shall be touched at any stage while withdrawing blood from the body of the person. He shall withdraw not less than 5 c. c. of venous blood in the syringe from the body of the person. The blood collected in the syringe shall then be transferred into a phial containing anti-coagulant and preservative and the phial shall then be shaken vigorously to dissolve the anti-coagulant and preservative in the blood. The phial shall be labelled and its cap sealed by means of sealing wax with the official seal or the monogram of the registered medical, practitioner'.

4 to 14. xx xx xx xx

15. Then, Mr. Thakore argued the last limb of his case, which, of course, was not put before the learned trial Magistrate as well as the learned appellate Judge. It is his submission that according to the Blood Test Rules, in the last portion of Sub-rule (1) of Rule 4, it is provided that the phial in which blood is transferred shall be labelled and its cap sealed by means of sealing wax with the official seal or the monogram of the registered medical practitioner. Mr. Thakore has laid stress on the words, 'with the official seal or the monogram of the registered medical practitioner',

16. Dr. Joshipura has specifically deposed in her examination-in-chief that the phial after having been vigorously shaken was labelled and sealed with the seal impression of Government of Gujarat. So, there is no dispute about labelling and sealing. But the dispute is pertaining to the use of a particular seal. It is clear that the impression of the seal used by Dr. Joshipura was 'Government of Gujarat'. The requirement of Rule 4 of the Blood Test Rule is that the phial should be sealed with the official seal or the monogram' of the registered medical practitioner. Though this Dr. Joshipura came with a case that she had used the seal impression of Government of Gujarat, no question is put to her as to whether that was her official seal. Question of using a monogram in the instant case would not arise because Dr. Joshipura is a medical officer attached to the Civil Hospital and, therefore, she is not a private registered medical practitioner who would be required to use a monogram. As she is the medical officer in Government Civil Hospital, she would naturally use the official seal. Question, therefore, is whether it can be said that the seal 'Government of Gujarat' is or is not an official seal of this Dr. Joshipura.

17. In order to support his argument, Mr. Thakore firstly relied on the decision of a Division Bench of this Court consisting of D. P. Desai and M. K Shah, JJ. in State of Gujarat v. Jonsing Gangusing Rajput, Criminal Appeal No. 598 of 1975, decided on 24-8-1978, and reported in 1979 Cri LR 181(Guj). In that case, the phial was sealed with the seal of S. S. G. Hospital, MLD, Baroda. The Division Bench considered it to mean, seal of the Medico-legal Department of the hospital and not the seal of the medical practitioner who had collected the blood. In that case the Division Bench found two infirmities first was about the seal, and the second was

that the report showed that the sample was sent by registered post, while P.W. 5 Chandrastoh deposed that he had carried the sample personally. It was, therefore, considered that these were the two features which disclose that the procedure which is of a mandatory nature, as prescribed by Rule 4, was not followed in that case. Therefore, it was considered that the report of the chemical analyser Ex. 6 would not be helpful to the prosecution to raise presumption against the accused.

18. As we have considered earlier, the requirement of Rule 4 of the Blood Test Rules is that there should be an official seal or monogram of the registered medical practitioner. We have to appreciate that so far as the word 'seal'¹ is concerned, it requires to be the 'official seal' of the registered medical practitioner, and if the official seal is not there, then there should be a monogram of the registered medical practitioner used, which would be the personal monogram of the medical officer concerned. This eventuality of monogram would arise in the case of a medical practitioner who does not collect blood in his official capacity attached to the hospital; or that hospital has no official seal.

19. Section 2(38) of the Act defines 'registered medical practitioner' as under:

2, In this Act, unless there is anything repugnant in the subject or context,-(38) 'registered medical practitioner' means a person who is entitled to practice any system of medicine in the State under any law for the time being in force relating to medical practitioners, and includes registered dentists...

So, the definition under the Act covers all the registered medical practitioners, while under the Blood Test Rules, Sub-rule (4) of Rule 2 defines 'registered medical practitioner' as under:

2. In these Rules unless, there is anything repugnant in the subject or context.-(4) 'Registered Medical Practitioner' means any registered medical practitioner authorised by general or special order by the State Government under Sub-section (1) or Sub-section (4) of Section 129A of the Act.

Under Section 129A of the Act, for establishing that a particular person has consumed an intoxicant or for the purpose of procuring of evidence thereof, the prohibition officer or the Police Officer has to produce such a person before the registered medical practitioner authorised by general or special order by the State Government in this behalf for the purpose of such medical examination. So, the Blood Test Rules circumscribe the particular registered medical practitioners so far as the blood-test examination is concerned, and by notification Under Section 129A of the Act, the State Government has authorised eight categories of persons to be the registered medical practitioners for testing blood. We are not concerned with the details of those medical officers, but it shows that so many categories are considered to be the registered medical practitioners authorised for testing of blood. Each may have a different official seal of the office or the seal used by him as an official seal, whatever it may be, and if there is no official seal, then he has to use the monogram.

20. The aforesaid decision of the Division Bench of this Court in Jonsing Rajput's case 1979 Cri LR 181)(Supra, shows that if there is no official seal, then the monogram of the registered medical practitioner should be there. It is not laid down therein that even in case of an official seal it must contain the monogram of the registered medical practitioner, Attempt before us is to show that Dr. Joshipura should have used her own seal, but, as considered earlier, if the official seal is there, then the question of her own monogram, which is attempted to be mentioned as a seal before us, would not arise. So, such an argument that even in case of official seal it must contain the monograms of the registered medical practitioner, cannot appeal to us, for the simple reason that an official seal stands on a different footing from the monogram of the registered medical practitioner. If that is attempted to be imported then it would be doing violence to the language of Rule 4 of the Blood Test Rules which distinguishes an official seal from the monogram of a registered medical practitioner. This is quite obvious from the disjunctive conjunction 'or' used between the expressions 'official seal' and 'monogram'. We, therefore, do not find any merit in the argument that according to the Division Bench judgment of this Court in Jonsing Rajput's case Supra, even in case of official seal, monogram of registered medical practitioner must appear. It was never argued before the Division Bench that the seal of S. S. G. Hospital,

Baroda, was an official seal, and because that argument was not advanced, considering the requirement of Rule 4 of the Blood Test Rules, the Division Bench considered that there was necessity of a monogram (seal) of the registered medical practitioner who had collected the blood. We do not know what view the Division Bench would have taken if there was evidence before it that the seal on the phial was the official seal of the registered medical practitioner. Here before us, it has been specifically argued that the seal "Government of Gujarat"¹ is an official seal of the Medical Officer. This can really be inferred from the evidence of . Dr. Joshipura, because she has applied the seal in consonance with Rule 4 of the Blood Test Rules, and the seal applied by her is the seal bearing the impression 'Government of Gujarat', showing that it is her official seal, i.e. the official seal of the registered medical practitioner, and when she has used that particular seal, it would be presumed that it is her official seal, as this presumption can be raised Under Section 114(e) of the Evidence Act.

21. We would at this stage also refer to the decision of a single Judge of this Court (M. K. Shah, J.) in Mahajibhai Lakhabhai v. State of Gujarat. Criminal Revn. Appln. No. III of 1980, decided on 30-4-1980, and reported in 1981 Cri LR 185(Guj, wherein M. K. Shah, J. has also relied on the above referred decision of the Division Bench of this Court in Jonsing Rajput's case 1979 Cri LR 181)(supra) to which also he was a party, and observed :

The seal affixed was not of the registered medical practitioner who had collected the blood, that is, Dr. Arvind K. Patel, but the seal affixed was the seal of the S.S.G. Hospital (M. L. D., Baroda.

As considered by us earlier, so far as the medical officer in. that case is concerned, there is no question of any seal, but the requirement of the monogram of a particular registered medical practitioner is necessary, but if the registered medical practitioner uses the official seal, then the question of a seal or monogram in the individual name of the registered medical practitioner would never arise. If this aspect is imported in R.'4, then it would be stretching it too far. This would mean that even if the medical practitioner has affixed his official seal or the seal of his office, still, however, there would be necessity of his personal monogram in

order to have authenticity of the sample of blood sent to the chemical analyser. We must not lose sight of the fact that this provision of having a seal mentioned also in Form 'B' is necessary in order to safeguard the interest of the person whose blood is collected and also to assure the authenticity by comparing the two seals. Intention of the rule is that the seal affixed on the phial must be identical to the seal mentioned by the medical officer in Form 'B' wherein facsimile of the seal is required to be mentioned. If both tally, the chemical analyser can be confident about the authenticity of the sample sent for analysis. So. if from the seal of the medical officer it can be said that, the seals on the bottle and the seal which he had affixed on form 'B' are the same, then the requirement of Rule 4 can certainly be said to have been complied with, because it is a guard to vouchsafe the authenticity of the blood sent, In order to have a safeguard, Rule 4 provides that either an official seal be used by the registered medical practitioner, or, if there is no official seal, then he shall have to use his monogram.

22. A faint argument was advanced by Mr. Thakore . by referring to Ex. 7(Form 'B', a letter,, by the Medical Officer informing about forwarding by R. P. P. blood phial. This was received by the office of the Chemical Analyser, Junagadh. On this Ex. 7 there is seal of the Medical Officer, Government of Gujarat, and there is also seal of The Chemical Analyser, junagadh. From this, Mr. Thakore wanted to submit that W the official seal of the Chemical Analyser, Junagadh is in his own name, then for the Civil Hospital also there should be the seal in its name and that should be considered to be the official seal, and if that is not there, then there should be the personal seal (monogram) of Dr. Joshipura. We are not prepared to accept this argument of Mr. Thakore mainly because according to the evidence of Dr. Joshipura, she has affixed the seal of Government of Gujarat which is her official seal, Therefore, it cannot be said that it is almost imperative to use the seal of Civil Hospital just in order to make it the official seal.

23. Under these circumstances we come to the conclusion that the acquittal of the respondent-accused by the learned appellate Judge is not justified. The appeal, therefore, filed by the State requires to be allowed.

24. xx xx xx.

