

(2012) 09 GUJ CK 0071
In the Gujarat High Court

Case No : Criminal Revision Application No. 107 of 2011

Ashishbhai D. Panchal

APPELLANT

Vs

State of Gujarat and 1

RESPONDENT

Date of Decision : 14-09-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 2(q), 397, 401

Citation : (2012) 09 GUJ CK 0071

Hon'ble Judges : M. R. Shah, J

Bench : Single Bench

Advocate : P.B. Khambholja For Mr. N.K. Majmudar, for the Appellant; C.M. Shah, APP for Respondent No. 1 and Mr. Samirkhan Pathan for M/s S.G. Associates, for the Respondent

Judgement

Honourable Mr. Justice M.R. Shah

1. The present Criminal Revision Application u/s. 397 read with section 401 of the Criminal Procedure Code, has been preferred by the petitioner herein - original accused No. 2 to quash and set aside the impugned order dated 12/11/2009 passed by learned Metropolitan Magistrate, Court No. 25, Ahmedabad below Exh. 7 in Criminal Misc. Application No. 65 of 2008 as well as impugned judgment and order dated 22/12/2010 passed by learned Additional City Sessions Judge, Court No. 12, Ahmedabad in Criminal Appeal No. 322 of 2009. At the outset, it is required to be noted that respondent No. 2 herein initiated the proceedings before learned Magistrate under the provisions of The Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "the Act") against the petitioner herein as well as mother-in-law and sister-in-law of the complainant. The petitioner herein and his family members submitted application Exh. 7 before learned Trial Court to dismiss the complaint on the ground that as alleged incident had taken place during year 1994-2002 and the Act came into force in the year 2005, such complaint is not maintainable. It was also submitted that even considering section 2(q) of the Act, the complaint could

not have been filed against the female members of the family Learned Trial Court rejected the application Exh. 7 vide judgment and order dated 12/11/2009.

2. Feeling aggrieved by and dissatisfied with the judgment and order dated 12/11/2009 passed by learned Metropolitan Magistrate, Court No. 25, Ahmedabad below Exh. 7 in Criminal Misc. Application No. 65 of 2008, the petitioner herein and other respondents - female respondents preferred Criminal Appeal No. 322 of 2009 before the learned Appellate Court and despite the fact that controversy Whether the proceedings under the Act can be initiated against the female members of the family or not, was pending before Hon"ble Supreme Court, learned Additional City Sessions Judge, Court No. 12, Ahmedabad partly allowed the said appeal and discharged two ladies/female respondents. However, by impugned judgment and order dated 22/12/2010 has dismissed the said appeal qua the petitioner herein.

Being aggrieved by and dissatisfied with the impugned judgment and orders passed by both the Courts below, the petitioner herein - original accused has preferred the present Criminal Revision Application u/s. 397 read with Section 401 of the Criminal Procedure Code.

3. Having heard Mr. PB. Khambholja, learned advocate appearing for Mr. N.K. Majmudar, learned advocate appearing on behalf of the petitioner herein; Mr. Samir Khan Pathan, learned advocate appearing on behalf of respondent No. 2 and Ms. C.M. Shah, learned Additional Public Prosecutor appearing on behalf of respondent No. 1 -State and considering the impugned judgment and orders passed by both the Courts below, it appears that Whether for the offence and/or incident of harassment/ill-treatment, which has taken place prior to the Act of 2005, Whether proceedings under the Domestic Violence Act can be initiated or not? The said question is now not res-integra in view of the decision of this Court rendered in Criminal Misc. Application No. 9938 of 2009 as well as recent decision of the Hon"ble Supreme Court in the case of V.D. Bhanot V/s. Savita Bhanot reported in 2012(1) GLH 688. Mr. Khambholja, learned advocate appearing on behalf of the petitioner herein is not in a position to point out any contrary decision to the aforesaid decision taking the view that even for the incident which has happened prior to the Domestic Violence Act, 2005, the subsequent complaint is maintainable. In view of the above and for the reasons stated hereinabove, there is no substance in the present Criminal Revision Application and the deserves to be dismissed and is accordingly dismissed. Notice is discharged.