

(1999) 02 GUJ CK 0047

In the Gujarat High Court

Case No : Spl. Civil Application No. 10199 of 1998

Jagdishchandra L. Oza and Another

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 16-02-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1999 Guj 314

Hon'ble Judges : C.K.Thakker, Acting C.J.;M.C. Patel, J

Bench : Division Bench

Advocate : S.R. Divetia, AGP (for Nos. 1 and 3), Arun H. Mehta, (for No. 2), P.M. Thakkar and G.R. Pathak, (for No. 4), for the Respondent

Judgement

C.K. Thakkar, Actg., C.J.—This Special Civil Application was registered as a suo motu petition on a letter addressed to this Court. It was stated in the said letter that an exhibition of paintings by respondent No. 4, Mohsin Shaikh, was held on November 21, 1998 at Ravishanker Raval Art Gallery, Ahmedabad. As per the said letter, the pictures exhibited in the said exhibition were pornographic and depicted naked human couple, which was obscene. The author of the letter, therefore, requested this Court to take appropriate actions against the painter and also against the respondent No. 2, Times of India, for reproduction of a picture in its Daily, "Times of India".

2. Notices were issued by this Court, pursuant to which the respondents appeared. Respondent No. 4 has filed an affidavit on December 12, 1998. In the said affidavit, he has stated that it was not correct to describe the exhibition as a pornographic show, as it is "sought to be contended in the letter. The deponent has asserted that he is an Artist, having qualification of Postgraduate Diploma of Creative Paintings from the State of Gujarat. He is in the field of art since last 20 years. His paintings have been displayed on permanent basis at several important places, including the Prime Minister's residence at New Delhi, Governor's Official residence at Gandhinagar, official residence of the Chief

Minister of Gujarat, in the Legislative Assembly of Gujarat and in almost all Circuit Houses in the State. His paintings find place in many industrial Houses also. He has held several exhibitions and important dignitaries, including Governors, former Prime Minister, and Speakers have appreciated his work of art. It is his say that the exhibition at Ravishanker Raval Art Gallery was visited by a number of important dignitaries and has received glowing tributes and acclamations. He has given some names who visited the exhibition. His work has been appreciated by Media.

3. Regarding the picture in question, he had denied that it was pornographic. He has stated that he felt sorry when some persons got such impression. At the most, it was a subjective approach of the viewer, but in the field of art, it could not be said to be of a pornographic nature. Finally, he had stated that it was not his intention to keep any pornographic show and the petition deserves to be dismissed.

4. So far as respondent No. 2 is concerned, it cannot be forgotten that it is a daily newspaper and it will be read and seen by a common man as it goes house to house. It is the leading newspaper of this State. Considering that fact, this Court asked respondent No. 2 to file an affidavit. Accordingly, an affidavit was filed on 28th December, 1998. In the affidavit, it was stated that it was the practice of respondent No. 2 to inform its readers of Ahmedabad and Gandhinagar of various arts and cultural activities and events taking place in the City of Ahmedabad, such as public exhibitions, functions, conferences, etc., held there. In pursuance of the said policy, it had published an Article in "The Ahmedabad Times" relating to paintings of respondent No. 4 based upon an interview of the painter by Sudeshna Sarkar of respondent No. 2. The intention of the publication was to inform the residents of Ahmedabad and Gandhinagar about public exhibition of paintings held at Ravishankar Raval Art Gallery, Ahmedabad. There was no intention on the part of the respondent No. 2 behind the publication to adversely affect public morality. It is stated that the respondent No. 2 has a large circulation and is a reputed newspaper and is respected all over India for its high standards, independence, integrity and morality. In paragraph 6, the deponent has said :

"..... If in the opinion of this Hon"ble Court, there is any moral impropriety committed in publishing such article, I sincerely tender my apology to this Hon"ble Court for publication of the said article."

A prayer was, therefore, made to discharge the notice issued by this Court.

5. We have heard Mr. S. R. Divetia, Assistant Government Pleader, for respondents Nos. 1 and 3, Mr. A. H. Mehta for respondent No. 2 and Mr. P. M. Thakkar, Senior Advocate, instructed by Mr. G.R. Pathak, for Respondent No. 4.

6. In the facts and circumstances of the case, in our opinion, no strict view is called for against respondent No. 4 in the light of the affidavit filed by him. We accept the said affidavit and discharge the notice so far as respondent No. 4 is

concerned.

7. Regarding respondent No. 2, in the facts and circumstances of the case, we accept the affidavit-in-reply filed by respondent No. 2 and discharge the notice. At the same time, however, it would be necessary to observe that respondent No. 2 is a daily newspaper. It reaches house to house. When a picture is depicted in such a widely acclaimed newspaper, several families would come across such picture. It is seen by all the family members in the house. That fact, therefore, must not be overlooked.

8. In our considered opinion, two things are different; namely, a picture kept in an art gallery and a photograph depicted in a newspaper, having wide circulation, which reaches a common house. In the former class of cases, ordinarily, persons interested in art visit the place and appreciate the work but in the latter class of cases, it reaches common mass who may or may not be able to perceive art and may not appreciate the message of an artist. We hope and trust that, in future, the respondent No. 2 will keep this distinction in mind.

9. For the foregoing reasons, we do not propose to take any action either against the respondent No. 4 or against the respondent No. 2. The petition accordingly stands disposed of. Notice is discharged. In the facts and circumstances, no order as to costs.