

(2010) 12 GUJ CK 0134
In the Gujarat High Court

Case No : Special Criminal Application No. 2435 of 2010

Kapilkumar Bharatbhai Thakkar

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 20-12-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 12 GUJ CK 0134

Hon'ble Judges : Bankim N. Mehta, J;A.M. Kapadia, J

Bench : Division Bench

Advocate : Ankit Y. Bachani, for the Appellant; L.B. Dabhi, Assistant Public Prosecutor for Respondents 1 and 2 and Alpesh G. Dodia, for Respondent 3, for the Respondent

Judgement

A.M. Kapadia, J.—Rule. Mr. Dabhi, learned APP appears and waives service of notice of Rule on behalf of the Respondent No. 1 - State of Gujarat as well as Respondent No. 2 - PSI, Deodar Police Station, Tal: Deodar, Dist: Ahmedabad, whereas Mr. Alpesh Dodia, learned advocate appears and waives service of notice of Rule on behalf of the Respondent No. 3 - Chhanalal Keshavlal Thakkar.

2. By filing instant petition under Article 226 of the Constitution of India, the Petitioner has prayed to issue writ of Habeas Corpus or any other appropriate writ, direction and/or order directing Respondent Nos. 2 and 3 to produce wife of the Petitioner namely "Dharti", who is allegedly in illegal detention of her father Respondent No. 3 Chhanalal Keshavlal Thakkar and to hand over her custody to him.

3. As per the averments made in the petition, the Petitioner and Respondent No. 3 belong to the same caste and community. The Petitioner and Dhartiben carried out marital rites and rituals as per Hindu religion in presence of Purohit Dilipkumar Trivedi in the sim of Deodar Gram Panchayat on 16.6.2010 and the same marriage has been registered on 25.8.2010 before the Marriage Registrar, Gram Panchayat, Tal: Deodar, Dist: Banaskantha.

3.1 It is further averred in the petition that on 11.11.2010, Nikunj Kumar Thakkar, brother of the present Petitioner made a written complaint before the PSI, Deodar Police Station against Respondent No. 3 - Chhanalal Keshavlal Thakkar as he has created trouble and harassment to him and his family. Respondent No. 3 therefore, accompanied with people of their community, turned up with the assurance that he is taking Dhartiben - wife of the Petitioner for only 4-5 days at his residence and would surely send her back, but till date, he has not sent Dhartiben, in stead he is not even permitting the Petitioner to either talk or meet his wife.

3.2 It is further averred in the petition that Nikunj Kumar - brother of the Petitioner made a statement before Assistant Sub Inspector, Deodar to take immediate and necessary steps in the matter.

3.3. It is further averred in the petition that the Petitioner as well as his wife Dhartiben are major and have every right to take their own decision and so, their step of marriage is not illegal. Both of them have not done out caste marriage; in fact have married in the same caste and community. The Petitioner is doing retail business and so is earning good enough to carry out basic livelihood, necessities and keep her wife happy. Both were happily married and were leading prosperous life, but Respondent No. 3 came in between to satisfy his own ego and has taken his wife at his residence and not ready to set her free. The Petitioner has therefore, filed instant petition seeking writ of Habeas Corpus and prayed for the relief to which the reference is made in the earlier paragraph of this judgment.

4. This Court vide order dated 6.12.2010 issued Notice to Respondents, which was made returnable on 20.12.2010 on condition that the applicant shall deposit Rs.10,000/- as a cost, to show his bona fide, on or before 8.12.2010 before the Registry of this Court.

5. Notwithstanding the aforesaid order passed by this Court, Mr. Alpesh Dodia, learned advocate appeared before this Court on 9.12.2010 and stated that he has received instructions to appear on behalf of Respondent No. 3 - Chhanalal Keshavlal Thakkar - father of corpus Dhartiben, as he came to know about issuance of notice by this Court. He had also stated that Respondent No. 3 had also brought his daughter corpus Dhartiben with him. We had therefore, ascertained will and willingness of corpus Dhartiben on that day. She had stated that it is true that she has solemnized her marriage with the Petitioner - Kapil Kumar Bharatkumar Thakar, but, now she does not want to stay with the Petitioner and wants to stay with Respondent No. 3 Chhanalal Keshavlal Thakkar - her father at parental home. Since the Petitioner has not deposited the cost and the matter was not fixed for hearing on that day, this Court has adjourned the matter and interim custody of corpus Dhartiben was handed over to Respondent No. 3 Chhanalal Keshavlal Thakkar with the direction to produce her on the next date.

6. Today when the matter is called out, Mr. Alpesh Dodia, learned advocate for

the Respondent No. 3 states that in compliance of the earlier direction dated 9.12.2010, the Respondent No. 3 has brought the corpus with him and produced before the Court.

7. We have ascertained her wish and willingness and also inquired as to whether she is in illegal detention of her father Respondent No. 3 - Chhanalal Keshavlal Thakkar. She has reiterated the similar version which she had stated before us on 9.12.2010. she has categorically stated that though she has solemnized the marriage with the Petitioner - Kapilkumar Bharatbhai Thakkar, but now, she does not want to stay with him and want to stay with her father - Respondent No. 3 Chhanalal Keshavlal Thakkar at her parental home. She has also stated that she is not in illegal detention of Respondent No. 3 Chhanalal Keshavlal Thakkar.

8. On the facts and circumstances emerging from the record, more particularly, in view of the statement made by corpus Dhartiben to the effect that she does not want to stay with the Petitioner and want to stay with her father - Respondent No. 3 Chhanalal Keshavlal Thakkar and she is not in illegal detention of her father Respondent No. 3 - Chhanalal Keshavlal Thakkar, therefore, we have permitted corpus Dhartiben to go with her father Respondent No. 3 Chhanalal Keshavlal Thakkar.

9. Seen in the above context, the Habeas Corpus petition lacks merit and therefore, deserves to be dismissed.

10. At this stage, Mr. Ankit Bachani, learned advocate for the Petitioner does not press this petition and seeks leave to withdraw the same with a prayer that the amount of Rs. 10000/- deposited by the Petitioner, as a condition precedent for issuance of notice, may be paid back to the Petitioner, in view of the fact that corpus Dhartiben has admitted that she has solemnized the marriage with the Petitioner. Therefore, it is the right of the Petitioner to know her wish and willingness.

11. Mr. LB Dabhi, learned APP for the Respondent - State of Gujarat as well as Mr. Alpesh Dodia, learned advocate for Respondent No. 3 have no objection if leave as prayed for is granted and also the amount of Rs. 10000/- be paid back to the Petitioner.

12. In view of this, this Habeas Corpus petition is disposed of as it is withdrawn. Rule is discharged.

13. Registry is directed to pay back the amount of Rs. 10000/- to the Petitioner upon due verification.