

(2012) 11 GUJ CK 0005
In the Gujarat High Court

Case No : Special Criminal Application No. 3350 of 2012

Krupavati Ajeysinh

APPELLANT

Vs

Tushar Amrut Trivedi and Others

RESPONDENT

Date of Decision : 27-11-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 107

Citation : (2013) CriLJ 1172

Hon'ble Judges : Paresh Upadhyay, J

Bench : Single Bench

Advocate : K.L. Pandya, Addl. Public Prosecution, for the Respondent

Final Decision : Dismissed

Judgement

Paresh Upadhyay, J.—By this petition, invoking Article 226 of the Constitution of India, one family of three, led by lady named Mrs. Krupavati Ajeysinh Rathod, has approached this court in person and has prayed that her family needs police protection. The danger shown is from the neighboring family of one Amrutlal Chaturbhuj Trivedi, who is aged about 75 years, who resides with his sons, daughters-in-law and grand children, who all are joined as party respondent Nos. 1 to 8 in this petition. One of the complaints in the petition is to the effect that the dignity of the daughter of the petitioner is at stake at the hands of these private respondents and it is unsafe for her family to stay in her house, or to go in or out from her residence. It is also alleged in the petition that there is inaction on the part of the police authorities in this regard and hence she is constrained to move this Court, urgently. The Registry of this Court was moved by the petitioner on 23.11.2012, after working hours. Taking the averments made in the petition on its face value, all office objections, including that the petition was unaffirmed, were dispensed with for the time being and circulation of the petition was permitted on that very day. After due procedure and permission for taking up such matter for hearing urgently, the matter was taken

up for hearing at late evening by the Court, at the official residence. Mr. K.L. Pandya, learned Additional Public Prosecutor had remained present before the Court. The petitioner lady appeared in person and had addressed the Court at considerable length. Her husband Ajeysinh and daughter Nikita also addressed the Court at length. It was insisted by the petitioner, all the three persons, that they be provided police protection, that day itself (i.e. on 23.11.2012) and an order to that effect be passed against the authorities, ex parte.

2. The paper-book of the petition contained unaffirmed Gujarati petition and photocopies of some illegible handwritten Gujarati documents, which was not of any assistance to the court and therefore, the petitioner, her husband and daughter were permitted to vent their grievance in whatever form they wanted, without restricting it to what was stated in the petition. While the petitioner trio were ventilating their grievances, this Court found that there was absolute inconsistency amongst themselves as to what their real grievance was and they were changing their stand rapidly. At some time it was against many of the residents of the flats, at some time it was against the landlord in whose flat the petitioner family is residing, some time it was against their neighbor residing on the same floor which are respondents in this petition, at some time against the watchman and at some time against the police authorities. The cause of grievance also changed dramatically. It changed from seepage of water from the walls of their flat, improper plastering, falling of some portion of plaster from the ceiling and thereby damage caused to some electronic items of the petitioner family, denial by the petitioner to pay rent to the landlord against the denial of the landlord to compensate the petitioner family for the damage which they suffered, non-payment of maintenance charges to the Flat Owners Association, insistence of Secretary to pay maintenance by the petitioner family etc. When it was indicated by the Court to the petitioner trio that these are not the issues which can be gone into by this Court, it was sought to be canvassed that there is no safety of the dignity of the daughter, who is aged about 21 years of age and the intention of moving the petition so urgently is that cause. By this time, the petitioner and both other family members had created sufficient doubt about the genuineness of that grievance, however, when it was indicated to be the question of dignity of a lady, howsoever bad their credentials be, Court could not have brushed aside that grievance and therefore it was thought fit to look into and inquire about that aspect from the authorities. Learned Additional Public Prosecutor Mr. Pandya was asked to inquire from the concerned police station in this regard. At this juncture, the petitioner trio insisted that before any instruction is taken from police, let there be some order. The insistence of getting ex parte order further fortified the suspicion which had already taken shape in the mind of the Court by that time about the genuineness of the grievances of the petitioner. At that stage, all the three, again addressed the Court at length, mainly as to, that if instructions are taken from police, what type of complaints would come against petitioner themselves and what are their explanations thereto. The demeanour of these three persons (petitioners), which the court

had advantage to observe, further fortified the impression which the Court had gathered, that filing of the present petition could be an arm twisting tactic by the petitioner, Under these circumstances it was thought prudent, not to pass any ex parte order on 23.11.2012 and further hearing was scheduled on next day i.e. 24.11.2012 at 11:30 a.m. in the Court premises and learned Additional Public Prosecutor was asked to take appropriate instructions in the matter. Though being holiday, Registry was asked to make necessary arrangements for hearing of the matter on 24.11.2012, so that redressal of grievance of this nature, if genuine, is not delayed.

3. On 24.11.2012, the petitioner produced affirmed copy of the petition before the court, which is taken on record.

4. Learned Additional Public Prosecutor Mr. K.L. Pandya, informed the Court that the Police Inspector of Maninagar Police Station, Ahmedabad City, Mr. V.J. Gadhavi, against whom the petitioner has grievance, is present before the Court with relevant papers. Learned Additional Public Prosecutor, after taking instructions from the Police Inspector and going through the record, apprised the Court about the second side of the coin. This court had also put certain questions to the police officer present, to ascertain the totality of the facts. On 24.11.2012 also, the petitioner, her husband and daughter addressed the Court at length and mainly reiterated their arguments which they had made at length on 23.11.2012 evening, however in substance they discounted their case by saying that as and when they (the petitioner trio) go to their flat or out from their flat, they should not face any difficulty and for that purpose police protection should be provided to them.

5. Having heard all the three family members of the petitioner, Mr. K.L. Pandya Additional Public Prosecutor and the police inspector, the factual picture which has emerged before the Court is as under.

5.1 The petitioner is staying with her husband and daughter at Flat No. F-4 in Mihir Tower, Maninagar. She is a tenant. She is staying in said flat as tenant on the basis of lease and license agreement which she entered with one Arunbhai M. Shah, who is power of attorney holder of one Mr. Arun Acharya, who is landlord/ flat owner and who is staying abroad. According to her, they had started staying in this flat somewhere in August/September-2008. The first agreement was for 11 months. After its first expiry, it was renewed once, though after couple of months, for further period of 11 months. Thereafter they have not renewed it and admittedly she is staying in this flat without any authorization and she further conceded that since there is no agreement, she is not paying rent either. She further said that it is for the landlord to pay maintenance, parking charges etc. and she has nothing to do with that.

5.2 The housing colony named Mihir Tower consists of about 50 flats. One Mr. Amrutlal Chaturbhuji Trivedi, who is aged about 75 years, is Secretary of the flat owners association, who is asking for maintenance from the petitioner. Said

Amrutlal Trivedi is owner of Flat No. F-3 of Mihir Tower. Be it noted that the flat in which the petitioner is staying, is Flat No. F-4. Thus, the petitioner and Amrutlal Trivedi, Secretary, who is respondent in this petition, are staying on the same floor of the apartment.

5.3 The petitioner is staying unauthorizedly as tenant in the said flat. She is not paying rent to her landlord, not even maintenance to the society/association. Secretary of the society is aged about 75 years, he stays with his two married sons viz. Dilipbhai Trivedi and Tusharbhai Trivedi. Said Dilipbhai Trivedi and Tusharbhai Trivedi have also grown up children including married daughter. Thus, Amrutlal Trivedi aged about 75 years is staying on the same floor in the said apartment, with his family consisting of sons, daughters-in-law, grand children and great grand children. It is this entire family, which is joined as respondents in this petition, and apprehended rape on the daughter of the petitioner is also alleged and that was projected to be extreme urgency to ask for police protection ex parte.

5.4 On Court refusing to pass ex parte order, it could be seen that the petitioner trio were frustrated, since even according to them, if the other side is asked what is in the matter, many more things against the petitioner themselves were to come out. From record of this petition, it transpires that earlier on the complaint given by the present petitioner, Maninagar Police had taken out proceedings against Trivedi family under the provision of Section 107 of Cr.P.C. which came to be disposed of by the Executive Magistrate. Court No. 2, Metropolitan Area, Ahmedabad, since the petitioner herself had chosen not to appear before the Court to substantiate her complaint. On being asked by this Court in this regard, it was replied by the petitioner that it was her generosity that she gave up proceedings against accused therein who are respondents now.

5.5 Learned Additional Public Prosecutor, on instructions, has further submitted that the police has also received written as well as oral complaints against the present petitioner from the residents of the said apartment that the petitioner family is creating all sorts of nuisance and it has become very difficult for the families to stay there.

6. This Court is conscious that what is being adjudicated in this petition is not the inter-se dispute of the members of the housing society, however, from the petitioner herself, the entire thrust has been on these aspects only and the dignity of the daughter which was projected to be the sole basis to move the Court urgently, has gone in deep background by the petitioner herself. On 24.11.2012 while hearing the petition in the Court, the petitioners categorically discounted their case by saying that as and when they (the petitioner trio) go to their flat or out of their flat, they should not face any difficulty and for that purpose police protection be provided to them.

7. There is one more facet of this matter. On making hue and cry by the petitioner, in this month itself, on the eve of Dipawali festival, the Secretary of

the apartment, and other male family members of his family, the respondents herein, were taken in preventive custody. Considering the age of Amrutlal, at late night, he was produced before the Magistrate and was permitted to go home and his son was produced before the Magistrate on the next day and then he was allowed to go home. The Secretary of the Association and his son, celebrated Dipawali festival with their family, is seen by the petitioner as hostility by the police authorities towards her.

8. Considering the totality, this court finds that filing of this petition is abuse of process of law by the petitioner. It is sought to be played to achieve more than one illegal and illegitimate goals by the petitioner. Firstly, she is staying with her family in a flat illegally, without any authorization, without paying rent, without paying even maintenance, and therefore the flat owner or his representative, or even the Association, if permitted, with all the legitimacy can force the petitioner out of this flat, which she wants to thwart. Secondly, whatever nuisance which she and her family may create, is expected to be tolerated by other families of the apartment. During all this browbeating, the Secretary of the flat owner Association should neither ask for maintenance from her, nor he should listen to complaint of any other flat owner against her and if he dares, he will face consequences, including being behind the bars, which the petitioner lady has already done successfully. The present petition is one of the arm twisting tactics which the petitioner lady deploy for achieving her illegal goals and the mask put on this time, is the dignity of her daughter, which is found to be false and in effect, has stood abandoned as was given up by the petitioners themselves. It is reiterated that, this Court had benefit of observing the demeanour of all the three members of the petitioner family for considerable long time, and on that basis also it is found that the petitioner family did not appear like the victim but looked more like aggressor and blackmailer, and learned Additional Public Prosecutor, when was asked to inquire into the matter has also, after taking appropriate instructions, made submissions on that line only. In totality, I arrive at the judgment that the petition is filed as arm twisting tactic by the petitioner, with the mask of dignity of her adult daughter and is no less than the abuse of process of law. The petitioner is not entitled to any relief. The same is required to be dismissed with cost. For the reasons recorded above, the petition is dismissed. It is dismissed with the cost of Rs. 10,000/-. The amount of cost shall be deposited by the petitioner in the office of Commissioner of Police, Ahmedabad City within a period of two months from today and intimation thereof shall be given by the petitioner to Maninagar Police Station, Ahmedabad City.