

(2017) 04 GUJ CK 0085
In the Gujarat High Court
Case No : 10706 of 2013

PATEL KIRITKUMAR RAMABHAI & ORS.

APPELLANT

Vs

STATE OF GUJARAT & ANR.

RESPONDENT

Date of Decision : 24-04-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#) - Saving of inherent powers of High Court
[Indian Penal Code, 1860](#), [Section 114](#),
[Section 498A](#), [Section 323](#) -
Abettor present when offence is committed - Husband or relative of husband of a woman subjecting her to cruelty - Punishment for voluntarily causing hurt
[Dowry Prohibition Act, 1961](#), [Section 3](#),
[Section 7](#) - Penalty for giving or taking dowry - Cognizance of offences

Citation : (2017) 04 GUJ CK 0085

Hon'ble Judges : N.V.Anjaria

Bench : Single Bench

Advocate : MK VAKHARIA, ?DHAVAL N VAKIL, ?LB DABHI

Final Decision : Allowed

Judgement

1. Learned advocate Mr.M.K.Vakharia for the applicants does not press the present application for applicant no.1 i.e. Patel Kiritkumar Ramabhai. As far as the said applicant No.1 is concerned, this petition stands disposed of as not pressed. Learned advocate for the applicants further stated that applicant No.2 i.e. Patel Ramabhai Ishwarbhai has expired on 15th September, 2014. The application is abated qua applicant No.2 and does not survive.

1.1 This application survives for applicant no.3. i.e. Patel Kantaben Ramabhai.

1.2 Rule. Learned Additional Public Prosecutor Mr.L.B. Dabhi waives service of notice of Rule on behalf of the respondent No.1-State whereas learned advocate Mr.Dhaval Vakil waives service of notice of Rule on behalf of the respondent No.2-original complainant.

2. By invoking Section 482 of the Code of Criminal Procedure, 1973, the applicant has prayed for quashment of First Information Report bearing Crime Register No.I-124 of 2013 dated 27th May, 2013 registered with Ghatlodia Police Station, Ahmedabad under Sections 498A, 323, and 114 of the Indian Penal Code and Sections 3 and 7 of the Dowry Prohibition Act.

3. The facts as stated by the applicants in the present application are inter alia that the applicant No.1 is a U.S. Citizen, residing at Los Angeles, California State and was doing job as a Cashier in Gas

Store. His marriage was solemnized with the complainant-Aartiben on 07th December, 1997 in a group marriage ceremony at the village and subsequently was registered with Sub Registrar of Marriages, Ahmedabad. According to the applicants, there was neither mutual understanding nor matrimonial harmony between the applicant-husband and complainant-wife, which resulted into customary divorce as prevalent in their community by means of executing a notarised Deed of Divorce on 15th March, 2008. It was stated that after daughter and son borne out of the wedlock, the applicant sent America in the year 1999 and also upto 2010.

3.1 As far as the contents of the F.I.R. filed by the wife Aartiben was concerned, it was stated by her about solemnisation of marriage, birth of daughter-Drashti aged about 15 years and further that the in-laws including applicant Nos.2 and 3, that is father-in-law and mother-in-law, were used to taunt for having no male child and that the complainant should give male child to the family. In 2004, it was stated, son named Raj was borne, who was aged eight years at the time of filing of complaint. It was alleged that the applicant-husband took the complainant to Europe wanting that son takes birth there, however since the expenses of delivery was higher, finally the son was borne in India. It was generally alleged that in-laws were asking for bringing money. It was alleged that applicant-husband went away to U.S.A. In the year 2010, thereafter did not come back, therefore she was staying alone with children. It was stated that her father-in-law and

mother-in-law-the applicant Nos.2 and 3 left for the village to stay there and have been staying there since 2010. According to the allegations, on 23rd May, 2013 the applicant-husband came back to India from U.S.A. And came to the house on the next day. At that time altercation took place between the husband and wife. Ultimately wife filed the complaint.

4. Heard learned advocate for the parties.

5. The factual position comes out from the allegations in the First Information Report and the facts on record themselves that respondent Nos.2 and 3 were not residing with their son and the complainant- wife. The complainant herself has averred in her complaint that in the year 2010, her husband went to America. Since at that time, it is further stated, that the father-in-law and mother-in-law, that is applicant Nos.2 and 3, went away to stay at the village

and that the complainant was staying alone with her children. Given this factual context, allegations against the third applicant-accused mother-in-law stands substantially weaken. Not only they stand weaken, on careful perusal thereof as per the complaint, they are vague and general not to be sustained in the circumstances. The applicant No.3 is aged 80 years. Taking all these circumstances cumulatively, interest of justice would be dis-served rather than served in continuing criminal proceedings against accused No.3. The continuation of criminal prosecution render harassive and in the nature of abuse of process of law. The parameters laid down in

State of Haryana v. Bhajan Lal [(1992) 1 (Supp) SCC 335] were applied to the facts of the case.

6. As a result of above, application deserves to be allowed. The First Information Report bearing Crime Register No.I-124 of 2013 registered with Ghatlodia Police Station, Ahmedabad under Sections 498A, 323, and 114 of the Indian Penal Code and Sections 3 and 7 of the Dowry Prohibition Act is quashed.

7. Rule is made absolute.