

(2012) 02 GUJ CK 0100
In the Gujarat High Court
Case No : Criminal Application No. 89 of 2011

Payal Mihirbhai Patel

APPELLANT

Vs

State of Gujarat and 1

RESPONDENT

Date of Decision : 01-02-2012

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 482
Dowry Prohibition Act, 1961 — Section 3, 7
Penal Code, 1860 (IPC) — Section 114, 498A

Citation : (2012) 02 GUJ CK 0100

Hon'ble Judges : Mukesh R. Shah, J

Bench : Single Bench

Advocate : SP Majmudar for Petitioner 1, Mr. PP Majmudar for Petitioner 1, for the Appellant; LB Dabhi, APP for Respondent 1, Mr. Umesh A Trivedi for Respondent 2, for the Respondent

Final Decision : Allowed

Judgement

Honorable Mr. Justice M.R. Shah

1. The present Special Criminal Application under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure has been preferred by the petitioner-Smt Payal Mihirbhai Patel (original accused no. 3 as described in the chargesheet) to quash and set aside the order dated 14/09/2010 passed by the learned Metropolitan Magistrate, Ahmedabad below Exh. 2 in Criminal Case No. 147/2010 by which the learned Magistrate has rejected the application submitted by the petitioner to discharge her for the offences alleged arising out of the FIR, being C.R. No. I 1/2010 registered with Mahila Police Station, Ahmedabad for the offences punishable under Sections 498A and 114 of the Indian Penal Code and under Sections 3 and 7 of the Dowry Prohibition Act as well as the impugned order dated 09/12/2010 passed by the learned Principal Sessions Judge, Ahmedabad in Criminal Revision Application No. 462/2010 by which the learned revisional Court has dismissed the said Revision

Application confirming the order passed by the learned Magistrate dismissing the discharge application submitted by the petitioner.

2. The facts leading to the present Special Criminal Application in a nutshell are as under;

2.1. Respondent no. 2-original complainant has lodged the FIR, being C.R. No. I 1/2010 with Mahila Police Station against the petitioner-sister-in-law, father-in-law, mother-in-law and her husband for the offences punishable under Sections 498A and 114 of the Indian Penal Code and under Sections 3 and 7 of the Dowry Prohibition Act. Being aggrieved and dissatisfied with the same the petitioner preferred Criminal Miscellaneous Application No. 4059/2010 before this Court u/s 482 of the Code of Criminal Procedure to quash and set aside the said FIR qua her. However, in the meantime, the petitioner came to be charge sheeted by the concerned Investigating Officer and, therefore, the petitioner withdrew the same with a liberty to submit an appropriate application for discharge before the learned trial Court and accordingly this Court disposed of the said application as withdrawn with the above liberty. It appears that thereafter the petitioner and other accused persons submitted the application, Exh. 2 before the learned Magistrate for discharge and by impugned order the learned Magistrate dismissed the said discharge application. Being aggrieved and dissatisfied with the order passed by the learned trial Court below Exh. 2 in Criminal Case No. 147/2010 in dismissing the discharge application, the petitioner and other accused persons preferred Criminal Revision Application No. 462/2010 and the learned revisional Court vide order dated 09/12/2010 dismissed the said Revision Application confirming the order passed by the learned trial Court dismissing the discharge application. Being aggrieved and dissatisfied with the aforesaid two orders, the petitioner has preferred the present Special Criminal Application.

2.2 It is to be noted that against the impugned orders other accused persons have preferred Special Criminal Application No. 88/2011, which has been withdrawn today by other accused persons and, therefore, the present application is to be considered qua the petitioner (original accused no. 3 as per the chargesheet) sister-in-law of the original complainant to quash and set aside the order passed by the learned Magistrate dismissing the discharge application as well as the order passed by the learned revisional Court dismissing the Revision Application confirming the order passed by the learned trial Court refusing to discharge her.

3. Shri S.V. Raju, learned Senior advocate appearing on behalf of the petitioner (original accused no. 3 as per the chargesheet) has vehemently submitted that as such the petitioner has not committed any offence as alleged for which she is charge sheeted. It is submitted that admittedly the petitioner is residing at her in-laws place at Surat since 2006 i.e. much prior to the marriage of the original complainant with her brother. It is further submitted that even in the FIR and in the subsequent statement of the original complainant recorded during the course of the investigation nothing has come out that the petitioner has committed any

offence as alleged. It is submitted that except general and vague allegations that the petitioner used to telephone other accused person from Surat and instigate other accused persons as such there is no further material and/or evidence by which it can be said that the petitioner has committed the offence for which she is charge sheeted. It is submitted that therefore to continue the criminal proceedings against the petitioner would be unnecessary harassment to her and abuse of process of law and Court and the petitioner has to face the trial unnecessarily and, therefore, it is requested to exercise the powers under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure to quash and set aside the criminal proceedings qua her.

4. The present petition is opposed by Shri Umesh Trivedi, learned advocate appearing on behalf of respondent no. 2-original complainant. It is submitted that when after the investigation is concluded the Investigating Officer has submitted the chargesheet, having found prima facie case against the petitioner, when the learned Magistrate has considered the case and has found that prima facie case is made out against the petitioner also for which the petitioner is to be tried, it is requested not to exercise the powers under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure. It is submitted that as such there are specific averments and allegations against the petitioner that frequently she was making calls to her parents-other accused persons and was instigating them to harass the original complainant, which is sufficient at this stage to frame the charge and, therefore, the learned Magistrate has not committed any error and/or any illegality in dismissing the discharge application submitted by the petitioner.

5. Shri L.B. Dabhi, learned APP has supported Shri Trivedi, learned advocate appearing on behalf of the original complainant and has requested to dismiss the present petition by submitting that the learned Magistrate has rightly observed that there is a prima facie case against the petitioner for which she is to be tried and, therefore, it is requested to dismiss the present petition.

6. Heard the learned advocates appearing on behalf of the respective parties at length and considered the impugned Complaint, the chargesheet papers and the investigation papers, which are placed on record for perusal of the Court as well as the impugned orders passed by both the Courts below. Considering the averments and the allegations made in the Complaint as well as the statement of the original complainant, except general vague allegations that the petitioner used to call her parents and instigate them there is no further material on record implicating the petitioner with respect to the commission of offence for which she is charge sheeted. It is also required to be noted that as such the petitioner, who is the sister-in-law of the original complainant, is residing at Surat since 2006 i.e. much prior to the marriage between original complainant and the brother of the petitioner. It is true that normally at the time of framing of the charge what is required to be considered is whether there is any prima facie case made out for which concerned accused is required to be tried or not. This Court is conscious of

the limitation at the stage of framing of the charge. However, considering the overall facts and circumstances of the case and in absence of any further material and/or allegations and averments and except general allegations as stated hereinabove there is no material against the petitioner and in the facts and circumstances of the case, it appears to the Court that to continue the criminal proceedings against the petitioner-sister-in-law would be unnecessary harassment to her and she will have to face the trial unnecessarily and, therefore, it appears to the Court that this is a fit case to exercise the powers under Article 227 of the Constitution of India and u/s 482 of the Code of Criminal Procedure and to quash and set aside the criminal proceedings against the petitioner. However, the same shall be without prejudice to the rights and contention of the original complainant and/or the prosecution against other accused persons and they shall be tried by the learned Magistrate in accordance with law and on its own merits, without, in any way, being influenced by the present order, which would be qua the petitioner only.

7. In view of the above and for the reasons stated hereinabove, the present petition succeeds. The impugned criminal proceedings against the petitioner arising out of the FIR, being C.R. No. I 1/2010 registered with Mahila Police Station, Ahmedabad, the order dated 14/09/2010 passed by the learned Metropolitan Magistrate, Ahmedabad below Exh. 2 in Criminal Case No. 147/2010 as well as the order passed by the learned Principal Sessions Judge, Ahmedabad in Criminal Case No. 462/2010 are hereby quashed and set aside so far as the petitioner (original accused no. 3 as per the chargesheet) is concerned, however the same shall be without prejudice to the rights and contentions of the original complainant. It is observed that the prosecution against the other accused persons be tried by the concerned Magistrate in accordance with law and on its own merits, without, in any way, being influenced, by the present order, which is qua the petitioner only. Rule is made absolute accordingly.