

(2001) 05 GUJ CK 0038
In the Gujarat High Court

Prahladbhai Govindbhai Acharya and Others	APPELLANT
Vs	
Pritiben Devendrakumar Acharya and Others	RESPONDENT

Date of Decision : 22-05-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 362, 407, 482
Dowry Prohibition Act, 1961 — Section 3, 7
Penal Code, 1860 (IPC) — Section 114, 323, 498A, 504, 506(2)

Citation : (2002) 4 GLR 3065

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Judgement

S.K. Keshote, J.—The petitioners in all seven in number filed this Misc. Criminal Application u/s 482 of Criminal Procedure Code, 1973 and prayer has been made to quash and set aside the order dated 22-3-2001 passed by the Court in Special Criminal Application No. 1034 of 2000 as being in violation of principles of natural justice.

2. Briefly stated the facts of the case are that the respondent No. 1 filed a F.I.R. bearing No. 171 of 1997 in Ghatlodia Police Station, Ahmedabad for the offences under Sections 498A, 506(2), 504, 323 read with Section 114 of the I.P.C. and also under Sections 3 and 7 of Prohibition of Dowry Acts. This F.I.R. was lodged by the respondent No. 1 on 15-4-1997. After registration of this F.I.R. of the respondent No. 1 the police arrested all the petitioners and the respondent No. 2 for the alleged offences. The accused persons vis. the petitioners and the respondent No. 2 were produced before the Court of Chief Judicial Magistrate at Mirzapur and they were released on bail. After completion of investigation in the criminal complaint of the respondent No. 1 by the police, the police filed charge-sheet in the Court of Chief Judicial Magistrate at Mirzapur on 6-7-1988 and the same was registered as Criminal Case No. 1384 of 1997. The learned Chief Judicial Magistrate framed charges against the petitioners and the respondent No. 2. The petitioners are given out the gist/synopsis of the proceedings of the

dates in the case.

The respondent No. 1 filed Special Criminal Application No. 1034 of 2000 in this Court under Article 226 of the Constitution of India and prayed for the transfer of the Criminal Case No. 1384 of 1997 from the Court of Chief Judicial Magistrate, Mirzapur, Ahmedabad to the Court of Judicial Magistrate, First Class, Nadiad. It is alleged that the respondent No. 1 though knows well that there are in all 8 accused in the Criminal Case No. 1384 of 1997 but she made party to the respondent No. 2 only in the Special Criminal Application No. 1034 of 2000. This Special Criminal Application was allowed by this Court on 22-3-2001 and in the facts of this case the criminal case was transferred to the Court of Judicial Magistrate, First Class, Dakor.

The learned Counsel for the petitioners submitted written submissions and therein only contention raised is that as the petitioners were not made party to Special Criminal Application No. 1034 of 2000 and opportunity was not given to them to submit their objection and so they were not heard, the order made on 22-3-2001 deserves to be quashed and set aside. The petitioners put reliance on the ground of violation of principles of natural justice as they were not made party in the Special Criminal Application and no opportunity was given to them for hearing and in support of their this contention the reliance has been placed in the written submissions on the decisions of the Rajasthan High Court, this Court as well as the Hon''ble Supreme Court. These decisions are as under :-

- (1) National Central Co-operative Bank Ltd. Vs. Ajay Kumar and others, .
- (2) State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another, .
- (3) Habu Vs. State of Rajasthan, .
- (4) Chhabildas Shantilal Patel v. State of Gujarat and Anr. 1985 GLH 854.
- (5) Rajendra L. Acharya Vs. State of Gujarat, .
- (6) Dr. Jayantilal Mohanlal Desai Vs. State of Gujarat and Others, .
- (7) Prakashkumar Prahladbhai Patel Vs. District Primary Education Officer, .

3. I have given my thoughtful consideration to the only contention raised by the learned Counsel for the petitioner in written arguments and also gone through carefully the decisions of the Rajasthan High Court, this Court and Hon''ble Supreme Court.

4. It is not the case of the petitioners that they were not known of the fact that the Special Criminal Application No. 1034 of 2000 is filed by the respondent No. 1 in this Court for transfer of the criminal case from Ahmedabad to Nadiad. The relation of the petitioners with respondent No. 2 is as under :-

Petitioner Nos. 1 & 2 are parents.

Petitioner Nos. 3 & 4 are elder brother and bhabhi.

Petitioner Nos. 5, 6 & 7 are his brothers.

It is also not the case of the petitioners that the respondent No. 2 was living separately from them. Not only this, it is also not the case of the petitioners that the respondent No. 2 has not made known to them of the proceedings of the Special Criminal Application No. 1034 of 2000. It is borne out from the facts of the case that the petitioners were well aware of the Special Criminal Application No. 1034 of 2000 and their case has also been pleaded before this Court by the Counsel who appeared for respondent No. 2. The reference here may have to the Para No. 4 of the judgment aforesaid which reads as under :-

Shri Jhala, learned Counsel for respondent No. 2 on the other hand submitted that there are in all nine accused in criminal case and it will be a serious injustice to them in case the matter is transferred to Dakor from Ahmedabad. It has next been contended that in the matter of transfer of a criminal case, the Court has to consider the convenience of both the parties to the litigation. Next, he contended that all the accused are Government servants and to attend the case at Dakor or Anand, they will have to take leave. Lastly, it is contended that if this Court orders for transfer of this criminal case either to Anand or Dakor, the accused other than the husband be granted exemption from personal appearance in the Court.

5. This application filed u/s 482 of the Criminal Procedure Code is wholly misconceived and appears to be an attempt to mislead or to take undue advantage of this technical plea. u/s 482 of the Criminal Procedure Code, 1973 this Court exercises discretionary powers. Where the powers of the Court are discretionary under statute the conduct of the litigant who is invoking this discretionary power of the Court is utmost important and relevant. This application is nothing but only an attempt on the part of the petitioners and respondent No. 2 to delay the proceedings of the criminal case. It is not the case of the petitioners that the respondent No. 2 has challenged the order of this Court dated 22-3-2001. It is also not the case of the petitioners that the respondent No. 1 has got this order in collusion with the respondent No. 2. From the facts of this case, it is clearly borne out that the respondent No. 2 has taken the care of the rights, difficulties and inconveniences which are likely to be caused to the petitioners in case of transfer of the criminal case from Ahmedabad to other place.

6. Section 482 of the Criminal Procedure Code reads as under :-

Saving of inherent powers of High Court : Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

This power conferred to this Court under this provision by the legislature is available only in two contingencies i.e. where it is found that the order is to be made to prevent abuse of process of Court and secondly where Court considers it

to be necessary to pass the order in the interest of justice in the facts of given case.

7. In the facts of this case, it is difficult to accept that either of these grounds is available to this Court to grant any relief to the petitioners in this application. Section 407 of the Criminal Procedure Code gives wide powers to this Court for transfer of the case from one Court to another. From the order of this Court dated 22-3-2001 I find that the Court has made that order exercising its power under Sec. 407 of the Criminal Procedure Code. Where it is made clear and Court is satisfied that an order u/s 407 of Criminal Procedure Code is expedient and secure the ends of justice it can pass the order of transfer of the case. The Court found it to be a case where the powers u/s 407 of the Criminal Procedure Code is to be exercised to secure the ends of justice. Technically, the petitioners may be correct but the substance of the matter has to be looked into. It is high time where the Courts now are to consider the substance of the matter rather than to go on technicalities. It is not unknown that unscrupulous litigants are making all efforts to frustrate the rule of law as well as the decision of the Court by all means whatever available. Only ground raised as earlier said is that of violation of principle of natural justice in making of the order and even if it is found to be correct if is not obligatory for the Court that on that ground in all cases to grant relief to the litigant come up before it. In the written submissions the petitioners have cited decisions on the point that it is not the case of review of the judgment or order and Section 362 of the Criminal Procedure Code is not attracted. Decisions are there on the point that while exercising judicial or quasi judicial powers the Court is bound to adhere to the principles of natural justice and third where the order has been made in violation of principles of natural justice, it is a nullity and it has to be recalled. So far as the first point is concerned it may be debatable now in view of the latest pronouncement of the apex Court in the case of Hari Singh Mann v. Harbhajan Singh Bajwa and Ors. AIR 2001 SC 43. However, for the case in hand, I do not consider it to be necessary to go on this point in detail. Even if what the petitioner contended in the written submission is accepted to be correct, it is not obligatory in all cases even if the case of violation of principles of natural justice is made out the Court has to grant relief. In this case, prima facie I am satisfied that the petitioners were knowing the proceedings of the Special Criminal Application filed by the respondent No. 1 and still they have not put their grievance before this Court for consideration. This inference of fact that the petitioners were knowing the proceedings of the Special Criminal Application can reasonably be drawn on the basis of the following undisputed facts :-

(i) The respondent No. 2 was a party to the Special Criminal Application and his close relation with the petitioners,

(ii) How the petitioners came to know about the judgment of the Court in Special Criminal Application is not stated in written submissions as well as in the application. Similarly, it is also not stated how they got copy of the order,

(iii) It is not the case of the petitioners that they were not known of the proceedings of the Special Criminal Application,

(iv) It is also not the case of the petitioners that the respondent No. 2 has not made known them of the proceedings of the Special Criminal Application.

(v) The respondent No. 2 and the petitioners are living together, is also not in dispute,

(vi) That the respondent No. 1 got the order in Special Criminal Application in collusion with the respondent No. 2, is not the case of the petitioners,

(vii) The respondent No. 2 has not challenged the order of this Court made in Special Criminal Application.

(viii) The respondent No. 2 has taken care of rights, difficulties and inconveniences of the petitioners in Special Criminal Application i.e. he pleaded their case.

(ix) They only raised technical ground in the written submissions. How a prejudice or injustice will be caused in case this order is not recalled to them is not pleaded.

The petitioners have not come up with clean hands before this Court. This technical plea is sought to be raised with the object and purpose to delay the criminal case. The judgment given by this Court in Special Criminal Application has been accepted by respondent No. 2 as it is not the case of the petitioners that the same has been challenged. In case what the grievance made by the petitioners is correct they should have taken the matter in the appeal. The order of this Court was appealable.

If the matter is examined from another angle, we can reach to the same conclusion. In the Special Criminal Application, the respondent No. 2 has not raised a special ground of non-joinder of the petitioners as party thereto. The petitioners and respondent No. 2 have taken all chances to take decision in their favour in the criminal application but when the decision has gone against them now they have chosen to take this technical plea to undo the judgment which was otherwise appealable. The petitioners have not come up before this Court with all fairness and for real grievance. In the matter of violation of principles of natural justice alleged to have been made in making of the order by the Court in the judicial proceedings the affected persons are to satisfy to the Court prima facie to call the other side that a grave injustice will cause in a case where they are not afforded an opportunity of hearing. They have not shown in the written submissions what submissions what substantial prejudice and injustice will be caused to them in case this order is not recalled. In all the cases, it is not necessary and obligatory on the part of the Courts where a complaint has been made by the litigants of the violation of principles of natural justice made in passing of the order to recall the order unless it is satisfied that it will result in grave injustice to them. Whether by an order prejudice has been caused or not

to a party is a question of fact and it has to be established to the satisfaction of the Court by the party concerned. It is true that the petitioners are accused but it is also equally true that the respondent No. 2 was not altogether a stranger to the petitioners. It is to be stated at the cost of repetition that the petitioners want to take undue advantage of this technical plea. I cannot do better than to make reference to a decision of Apex Court in the case of Aligarh Muslim University and Others Vs. Mansoor Ali Khan, . In this case the Court has considered when an order passed in violation of principles of natural justice need to be interfered with. The Court has also discussed the exceptions to the principles that breach of principles of natural justice will itself result in causing prejudice.

8. Each case has to be decided on its own facts and even if we go by the fact of this case, I have no hesitation to hold that it is not a fit case where on this ground raised in the written submissions by the petitioners any relief deserves to be granted to them by this Court under its discretionary power as conferred to it u/s 482 of the Criminal Procedure Code. It is not a case of abuse of process of Court as well as warrants interference of this Court in the interest of justice. Be that as it may, otherwise also prayer made by the petitioner in this petition does not fall or cover or available to the petitioners u/s 482 of the Criminal Procedure Code. The prayer for quashing and setting of the order dated 23-3-2001 is available in the appellate Court. This Court u/s 482 of the Criminal Procedure Code cannot quash and set aside its own order. The prayer made by the petitioners otherwise also cannot be accepted in the facts of this case.

9. In the result, the Misc. Criminal Application fails and the same is dismissed. However, before parting with the case, I consider it to be necessary to observe that in case where any of the accused petitioners is aged above 65 years or weaken, the Court may consider their prayer if any made for grant of exemption from personal appearance sympathetically and keeping in view the decision given on this question by the Courts from time to time.