

**(2010) 06 GUJ CK 0003**

**In the Gujarat High Court**

**Case No : Special Civil Application No. 4267 of 2010**

Sonalben Keyurbhai Patel

APPELLANT

Vs

Superintendent, Regional Passport Office and Another

RESPONDENT

**Date of Decision : 14-06-2010**

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Hindu Marriage Act, 1955 — Section 29(2)

**Citation : AIR 2010 Guj 136**

**Hon'ble Judges : K.A. Puj, J**

**Bench : Single Bench**

**Advocate : Rajesh K. Shah, for the Appellant; P.S. Champaneri, for the Respondent**

## **Judgement**

K.A. Puj, J.—Rule. Mr. P.S. Champaneri, learned Assistant Solicitor General waives service of rule on behalf of the respondent.

2. The petitioner has filed this petition under Article 226 of the Constitution of India praying for direction to the respondent authorities to issue passport to the petitioner. The petitioner has also prayed for the direction to the respondent No. 1 to make necessary correction in the passport, in the name of the husband of the petitioner as "Keyurbhai Bhaskarbhai Patel".

3. This Court has issued notice on 8.4.2010. Pursuant to the notice Mr. Champaneri, learned Assistant Solicitor General appeared on behalf of the respondent and an affidavit-in-reply is filed on 23.4.2010 by the Dy. Passport Officer.

4. It is the case of the petitioner that the petitioner is a daughter of Rameshbhai Naranbhai Patel. The father of the petitioner belongs to Village : Valasan, Taluka, District Anand. The petitioner got married with one Mahendrabhai Maganbhai Patel on 8.2.2000, according to Hindu rites and customs at Village Valasan. After marriage, the petitioner stayed with her husband at Nairobi. However, due to

differences between the petitioner and her husband the petitioner left Nairobi and she came back to India on 23.9.2000. There was hardly four months married life of the petitioner and matrimonial dispute could not be settled and hence ultimately because of intervention of the friends, elders and near relatives the petitioner and her husband separated and divorce deed was executed on 28.2.2001 in presence of relatives and witnesses.

5. After the divorce the petitioner remarried with one Keyurbhai Bhaskarbai Patel, according to Hindu rites and customs at Anand on 26.10.2001. The said marriage was registered with the Registrar of Marriages, Anand on 13.7.2006. After the petitioner married with Shri Keyurbhai Bhaskarbai Patel the petitioner was known as wife of Keyurbhai Patel. During the wedlock with Keyurbhai Patel son "Tanmay" was born on 29.9.2003 at Anand and his birth was registered with Anand Municipal Local Area Authority on 30.9.2003 and daughter "Lency" was born on 22.3.2007 and her birth was registered on 23.3.2007 with Anand Municipal Local Area Authority, under the Birth & Death Registration Act. The petitioner is residing with her new husband - Keyurbhai Patel at Karamsad and she is having residential certificate as well as identity card of Election Commissioner of India.

6. The petitioner, thereafter, applied for passport to the respondent No. 1 and as per requirement of the Passport Office she filled up her Passport Application. The petitioner was originally possessing passport bearing No. 8779105 which was issued on 3.3.2000 and expired on 22.3.2005. Pursuant to the petitioner's application the passport authority has written letter on 26.2.2010 to the petitioner seeking certified copy of the Divorce Deed of Sub-Registrar Court. The petitioner has approached the respondent No. 1 and explained that in the Patel Community of Anand District, customary divorce is permissible and, therefore, she has not registered her Divorce Deed dated 20.2.2001 with the Registrar Office at Anand and she has not filed proceedings thereafter for mutual consent decree from the competent Court. The petitioner has also explained to the Passport Office that u/s 29(2) of Hindu Marriage Act no Divorce Decree or registration of a Divorce Deed is required if customary divorce is permissible. However, the Passport Officer was not ready to issue passport to the petitioner, hence present petition is filed.

7. Mr. Rajesh K. Shah, learned advocate appearing for the petitioner has submitted that the petitioner's wedlock with Mahendrabhai Maganbai Patel came to an end on 20.2.2001 and hence Divorce Deed was executed between the parties as per custom of the Patel community hence it is not required to be registered nor any decree from the competent Court is required to be obtained. In support of this submission he relied on the decision of this Court in the case of Twinkle Rameshkumar Dhameliya Vs. Superintendent, He has further submitted that immediately after the divorce with Mahendrabhai Patel the petitioner got remarried with Keyurbhai Patel on 26.10.2001 and the petitioner got two issues from this new marriage with Keyurbhai Patel. He has further submitted that there

is no reason for the Passport Officer to deny fresh passport as all necessary requirements are observed by the petitioner. He has, therefore, submitted that appropriate direction be issued to the respondent and respondent be directed to issue fresh passport to the petitioner.

8. Mr. P.S. Champaneri, learned Assistant Solicitor General, on the other hand, has submitted that the present petitioner was shown Divorcee at Col. No. 8 and was holding previous passport A8779105 issued on 23.3. 2000 wherein spouse name mentioned was "Mahendrakumar" and now she applied for the passport after remarriage showing spouse name as "Patel Keyurkumar Bhaskarbhai". He has further submitted that as per Ministry's Instructions the petitioner is required to furnish Divorce Decree or Death Certificate as the case may be and hence as per the direction she was asked to furnish Divorce Decree which was the pre-requisite procedure to be followed for acceptance of such cases following remarriage. He has further submitted that xerox copy of the Divorce Deed furnished by the petitioner was not even notarized and hence it is not a valid authentic document. He has further submitted that the judgment of this Court relied upon by the petitioner has no relevance to the facts and circumstances of the present case. He has, therefore, submitted that unless and until all necessary requirements as per guideline issued by the Ministry of External Affairs are complied with the Passport Officer cannot be directed to issue fresh passport with change of husband name.

9. Having heard the learned advocates appearing for the petitioner and respondent and having considered their rival submissions in light of the documents produced before the Court as well as in light of the provisions of the Act and decided case law on the subject, the Court is of the view that the petitioner separated from her first husband way back on 20.2.2001 and Deed of Divorce was executed on that day in presence of two witnesses. The said document was executed on Rs.500 stamp-paper. Subsequent to the said divorce the petitioner got remarried with Keyurbhai Bhaskarbhai Patel on 26.10.2001 and by this new wedlock the petitioner has got two issues, one son and one daughter. The facts regarding the divorce and second marriage are not in dispute and more than nine years have passed by now. The husband has never raised any objection with regard to the divorce or even with regard to the remarriage of the petitioner. For the purpose of issuance of fresh passport with change in the husband name the petitioner has already furnished Divorce Deed and also an affidavit is filed to that effect. It is true that the Divorce Deed was neither notarized nor registered. It is also true that the petitioner has not obtained decree of divorce from the competent Court. However, as per the judgment of this Court divorce by custom is permissible. It is held in the case of *Twinkle Rameshkumar Dhameliya Vs. Superintendent*, (Supra) that the stand taken by the Passport Authority insisting for Divorce Deed duly registered before Sub-Registrar or authenticated by the Court cannot be sustained since customary divorce can be said to be permissible unless it is objected by either party to the divorce deed or any person who is directly affected by the divorce deed. It is true

that in the judgment, the Court has further clarified that passport authority may insist for public notice in respect of divorce deed for dissolution of marriage between the petitioner and the first husband and may also insist for the affidavits of two elders of the community who are the signatories for the divorce deed. However, in the present case this was also not required in view of the fact that more than nine years have passed since second marriage and the petitioner has two issues from the second marriage. The affidavit of the petitioner has already been filed and divorce deed has not been disputed by any one till this date. The petitioner also belongs to Patidar Community and customary divorce is permissible in that community.

10. In the above view of the matter, the Passport Authority should act on the basis of divorce deed. At the most the petitioner can get it certified by the Public Notary on the basis of original divorce deed and such certified copy can be placed before the Passport Authority and on that basis passport shall be issued by the Passport Officer in favour of the petitioner with change in the name of the husband. The petitioner shall furnish such duly notarized certified true copy of the divorce deed to the Passport Officer and on receipt of such duly notarized certified true copy of the divorce deed the Passport Authority shall issue fresh passport in favour of the petitioner forthwith.

11. With these directions and observations this petition is accordingly disposed off. The petitioner is directed to deposit an amount of Rs. 5,000/- with the Passport Office.