(2011) 05 GUJ CK 0042

In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 7094 of 2011

Teesta Atul Setalvad APPELLANT

Vs

State of Gujarat and Another RESPONDENT

Date of Decision : 27-05-2011

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 160, 160(1), 438, 482

Citation : (2011) 05 GUJ CK 0042

Hon'ble Judges : G.B. Shah, J

Bench : Single Bench

Advocate : Kamini Jaiswal and Kalpesh N. Shastri, for the Appellant; P.K. Jani, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

G.B. Shah, J.—Rule. Mr P.K. Jani, learned Public Prosecutor waives service of Rule on behalf of the Respondents.

2. Heard Ms. Kamini Jaiswal, learned Counsel assisted by Mr Kalpesh M Shastri, learned Counsel for the Petitioner and Mr P K Jani, learned Public Prosecutor for the Respondents. The present Criminal Misc. Application has been filed u/s 482 of the Criminal Procedure Code, 1973 (for short, "the Code") for quashing of FIR registered as C.R. No. I-3 of 2006 with Lunawada police station, District Panchmahals as well as for quashing of summons dated 9.5.2011 issued by the In Charge, Deputy Superintendent of Police, Lunawada Region, Lunawada. The main relief sought for in para 15 (a) to 15 (d) reads as under:

15(a) YOUR LORDSHIPS be pleased to call for the offence registered as CR No. I-3 of 2006 with Lunawada police Station, Panchmahals, and after perusing the same be pleased to quash and set aside the impugned FIR in the interest of justice.

(b) YOUR LORDSHIPS be pleased to order that pending the hearing and final disposal of this application the further proceedings arising from the offence registered as CR No. I-3 of 2006 with Lunawada Police Station, Panchmahals be stayed in the interest of justice;

(c) YOUR LORDSHIPS be pleased to quash and set aside the summons dated 09.05.2011 as the same is sent without correcting the charge sheet and removal of the Petitioner as absconding accused;

(d) YOUR LORDSHIPS be pleased to order that pending admission and or final disposal of this petition the implementation and or operation of the summons dated 09.05.2011 at Annexure "T" herein be stayed in the interest of justice.

(e) ....

It is important to note that during the course of hearing, Ms. Kamini Jaiswal, learned Counsel for the Petitioner has declared that she does not press the prayers made in paras 15 (a) and 15 (b) and sought permission accordingly. The said permission sought for is granted.

2.1. It is not in dispute that the applicant/original accused No. 3 -Mehboob bhai Rasool bhai Chauhan and one another of the offences registered vide CR.I-No. 3 of 2006 referred to above had preferred Special Criminal Application No. 408 of 2006 and by order dated 28.4.2006, further proceedings , the investigation and coercive action by the Respondents qua CR. No. I-3 of 2006 registered with Lunawada police station was stayed by this High Court initially till 3.5.2006 and the said stay was continued upto 24.11.2010 when the said Special Criminal Application No. 408 of 2006 was dismissed as not pressed by the learned Senior Counsel for the Petitioners and accordingly Rule was discharged and interim relief granted earlier was vacated forthwith. It is also not in dispute that thereafter i.e. after 24.11.2010, the Investigating Officer started further investigation in the above referred CR. No. I-3 of 2006. It is also not in dispute that the present Petitioner has filed Cr. Misc. Application No. 72 of 2011 u/s 438 of the Code for Anticipatory Bail in the above FIR being CR. No. I-3 of 2006 with Lunawada police station before the Sessions Court, Panchmahals at Godhra which was allowed by order dated 15.2.2011 imposing the conditions therein. Referring the order portion of the said Criminal Misc. Application No. 72 of 2011, it further appears that the copy of the said order was directed to be forwarded to the court having jusrisdiction as well as to the concerned police station.

3. So far as the prayers at para 15 (c) and 15 (d) of this petition are concerned, as has been narrated above, the learned Senior Counsel for the Petitioner has drawn my attention to the document marked as Annexure "R" and has submitted that it is the summons issued u/s 160 of the Code dated 18.3.2011 asking the present Petitioner to remain present in Lunawada Sub Divisional Police Office, Lunawada on 25.3.2011 which was sent by Registered Post A.D. and the present Petitioner had received the same only on 25.3.2011 itself, and therefore, the Petitioner had sent reply dated 25.3.2011 by Fax and also by RPAD post drawing attention of the Investigating Officer to consider the provisions of Section 160 of the Code as the Petitioner is a woman witness, the statement shall be required to

be recorded at the place where the Petitioner is residing. Copy of the said letter/ reply is annexed as ''Annexure "U". Meanwhile the Investigating Officer of FIR No. CR.I-3 of 2006 referred above was transferred and the charge sheet was filed on 3.4.2011 wherein the Petitioner was shown as absconder despite the fact that the Petitioner was granted Anticipatory Bail and the Petitioner had as such not committed breach of any of the conditions imposed by the Sessions Court, Godhra while granting the same. She has further drawn the attention of this Court that thereafter the Petitioner had received summons at Annexure "V" dated 28.4.2011 asking the Petitioner to remain present in connection with CR. No. I-3 of 2006 and referring the said summons it did not mention Section 160 of the Code like the one dated 18.3.2011 sent earlier. The learned Senior Counsel for the Petitioner has then drawn my attention to the document at Annexure "W", detailed reply dated 6.5.2011 and submitted that attention of the Investigating Officer has been drawn to the fact that the earlier summons was issued u/s 160 of the Code and the Petitioner was summoned as a witness. Thereafter charge sheet was filed on 3.4.2011 showing the Petitioner as absconder despite the fact that the Petitioner was granted anticipatory bail and all the conditions of the bail were abode by her and so the Petitioner had further asked the Investigating Officer to remove the confusion regarding validity of the charge sheet by correcting the word absconder and further asked the Investigating Officer to give sufficient notice in the summons.

4. Then the learned Senior Counsel for the Petitioner has drawn my attention to a document at Annexure "T" dated 9.5.2011 and submitted that vide the said summons, the I.O. has again informed the Petitioner to remain present in connection with CR No. I-3 of 2006 with Lunawada police station which is under challenge and it is required to be quashed as the conduct of the I.O. reflects mala fide and vindictive action by issuing different types of summons and by declaring the Petitioner as absconder and accused and that the said action of the I.O. is nothing but malicious action.

5. Learned Public Prosecutor Mr P K Jani has drawn attention to para 5 of page No. 159 which is the order dated 15.2.2011 passed in Criminal Misc. Application No. 72 of 2011 u/s 438 of the Code filed by the Petitioner and submitted that while opposing the said Criminal Misc. Application on 15.2.2011 it was the case of the present Respondent No. 1 that the Petitioner was the main accused and so the prayer sought u/s 438 of the Code should not be granted and so it is not true to submit by the Petitioner that all of a sudden the Petitioner has been shifted from ''witness'' to ''accused''. He has further submitted that when the Petitioner is enjoying the benefit of provisions of Section 438 of the Code by obtaining order dated 15.2.2011 in her favour passed in Criminal Misc. Application No. 72 of 2011 then the duty cast upon the Petitioner to remain present before the Investigating Officer and on being arrested after following due procedure, she may be released and as at present she is an accused and not a witness, her name has been shown in column No. 2 as she has not cooperated with the Investigating Agency. Lastly the learned Public Prosecutor has submitted that

there appears no mala fide action played by the Investigating Officer and so this Court should not exercise the extra-ordinary power u/s 482 of the Code.

6. I have considered the above referred rival submissions made by the learned Counsel for the parties in light of the documents forthcoming on the record of this case. Annexure ''R'' is the summons issued u/s 160 of the code dated 18.3.2011 informing the present Petitioner to remain present in Lunawada Sub Divisional Police Station, Lunawada on 25.3.2011. Section 160(1) along with the proviso to the Code reads as under:

160(1) Any police officer making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case; and such person shall attend as so required:

Provided that no male person under the age of fifteen years or woman shall be required to attend at any place other than the place in which such male person or woman resides.

7. Referring the above Section 160(1) and the proviso and the procedure to be followed for the same, it is clear that it speaks about the Police Officers'' power to secure attendance of witnesses and in case of personal attendance of a woman accused/witness, she should not be summoned or required to attend the police station but the Investigation must be carried out only by woman police officer or keeping a woman police officer present where the accused woman resides. It is not in dispute that the present Petitioner is woman and she is residing at "Nirant, Juhu Tara Road, Juhu, Mumbai 400 049, the address on which the above referred summons u/s 160 has been served by Registered A.D. Post, copy of which is annexed at Annexure ''R''. Vide Annexure ''U'' dated 25.3.2011, the present Petitioner had drawn the attention of the Investigating Officer on the above point and requested to carry out the said procedure. Meanwhile, the Investigating Officer was transferred and the charge sheet was filed on 3.4.2011 wherein the Petitioner was shown as absconder despite the fact that the Petitioner was granted Anticipatory Bail and it is not the case of the Respondent-State that the Petitioner had committed any breach of the conditions imposed in the order dated 15.2.2011 passed in Criminal Misc. Application No. 72 of 2011. In reply to this, the explanation of the learned P.P. is that the Petitioner being an accused and not a witness, her name has been shown in column No. 2 of the charge sheet submitted on 3.4.2011 as the Petitioner has not cooperated with the Investigating Agency. From the above discussion and from the documentary evidence on record, it is very difficult for me to accept the above referred submissions made by the learned P.P. and I found the said submission is without any merit.

8. After 25.3.2011 and 3.4.2011, the Petitioner had received further summons/ letter at Annexure ''V'' dated 28.4.2011 asking the Petitioner to remain present

in connection with CR. No. I-3 of 2006 and referring the said summons/letter, it is clear that it did not mention anything on Section 160 of the Code like the previous summons/letter dated 18.3.2011 and therefore, the Petitioner had drawn attention of the Investigating officer vide document Annexure ''W'' which is the detailed reply dated 6.5.2011 by which also the attention of the Investigating Officer was drawn to the fact that the earlier summons was issued u/s 160 of the Code and it was received by the Petitioner on the day i.e. on 25.3.2011 when the Petitioner was asked to remain present at Lunawada Sub Divisional Police Office and also drawn attention of the Investigating Officer to the fact that the first summons was issued to the Petitioner as a witness to which she had replied vide letter dated 25.3.2011 itself and the second summons/letter reflects some confusion in the charge sheet which in turn appears to be a mistake and the summons appears to be misguided, illegal and urged to be corrected. Attention of the Investigating Officer was also drawn to the fact that since the Anticipatory Bail application was argued at length before the Hon''ble court concerned which had granted bail, the subsequent inclusion of the Petitioner in the charge sheet as absconder/accused in column No. 2 is clearly misleading and is a mistake and is requested for correction of the charge sheet. It appears from the record that the Investigating Officer had, vide letter dated 9.5.2011 Annexure "T", again informed the Petitioner to remain present on 31.5.2011 and the same is under challenge in this application.

9. I have carefully gone through the same. Regarding the earlier reply of the Petitioner dated 6.5.2011 Annexure "W" referred above, not a single word has been stated or clarified by the Investigating Officer in the summons/letter at Annexure "T". In my view, silence of the Investigating Officer on the above point referred in the letter dated 6.5.2011 at Annexure "W" appears deliberate omission on his part trying to justify certain glaring mistakes committed by him.

10. The object which is sought to be achieved by Section 438 of the Code is that the moment the person is arrested, if he/she has already obtained an order from the Court of Sessions or from the High Court, he/she shall be released immediately on bail without being sent to jail. It is the argument of the learned P.P. that as the Petitioner had not cooperated with the Investigating Agency and accordingly name of the Petitioner was shown in column No. 2 while submitting charge sheet dated 3.4.2011. From the above discussion it is clear that the Respondents had miserably failed in showing a single instance from which it can be said that the Petitioner had not cooperated with the Investigating Agency. In my view, if the Investigating Officer had come to the conclusion that the Petitioner had not cooperated and misused the liberty granted to her vide order dated 15.2.2011 passed in Criminal Misc. Application No. 72 of 2011 filed u/s 438 of the Code, then the proper course would be to move to the Court concerned which had granted the Anticipatory Bail for cancellation of the same after following due procedure for the same but the Investigating Officer cannot put name of the Petitioner in column No. 2 of the charge sheet dated 3.4.2011 showing her as absconder. In the submission made by the learned Senior

Counsel for the Petitioner that inclusion of the name of the Petitioner in column No. 2 is nothing but the stigma to a person, there appears to be substance in it. This Court is well aware with the fact that powers u/s 482 of the Code cannot be liberally exercised but in the instant case, as discussed above, a glaring mistake has been committed by the Investigating Officer showing name of the Petitioner as absconder in column No. 2 of the charge sheet dated 3.4.2011 and though attention of the Investigating Officer regarding the same had been drawn by the Petitioner, the Investigating Officer had remained silent and hence the present Criminal Misc. Application deserves to be partly allowed and hence the following order:

11. This Criminal Misc. Application No. 7094 of 2011 is partly allowed. The impugned summons/letter dated 9.5.2011 at Annexure "T" is hereby quashed as the same was sent without correcting the charge sheet dated 3.4.2011 produced before the Court concerned. It is clarified that the Investigating Officer is at liberty to rectify the above referred mistake occurred in the charge sheet dated 3.4.2011 and proceed further with the investigation in accordance with law. Rule is made absolute to the aforesaid extent.

