

(2005) 02 GUJ CK 0031

In the Gujarat High Court

Case No : Special Civil Application No. 1260 of 2005

Twinkle Rameshkumar Dhameliya

APPELLANT

Vs

Superintendent

RESPONDENT

Date of Decision : 23-02-2005

Acts Referred:

Hindu Marriage Act, 1955 — Section 29(2)

Citation : AIR 2005 Guj 267

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : Purva R. Bhatt, for the Appellant; M.A. Shaikh, for the Respondent

Judgement

Jayant Patel, J.—Rule, Mr. M.A. Shaikh, Learned Additional Central Government Standing Counsel waives service of rule on behalf of the respondent authorities. With the consent of learned counsel for the parties matter is taken up for final hearing today.

2. The short facts of the case are that on 17.4.2000 the petitioner married to one Chandulal Kunvarjibhai Kanani and the said marriage registration is registered with the Sub-Registrar, Rajkot. It appears that the petitioner applied for passport on her name as married to Chandulal Kanani. The respondent passport authorities on the basis of said application has issued passport bearing No. B 3283015 on 10.1.2001. It is the case of the petitioner that thereafter there were some disputes between the petitioner and her husband and as both belong to Patel community in the presence of the relatives and leaders of the Patel Community it was decided to put an end to the marriage and therefore divorce deed has been executed on 28.1.2002 in the presence of notary and the said divorce deed is also executed in the presence of two relatives of the petitioner as well as two relatives of her ex-husband Chandulal Kanani. It is also the case of the petitioner that thereafter she has married with Rameshkumar Jadavbhai Dhameliya on 17.2.2002. The petitioner has also applied for registration of marriage. However, the certificate from the Sub-Registrar of Marriages is

awaited. As the petitioner is desirous to have the new passport showing her name as wife of Rameshkumar Jadavbhai Dhameliya the petitioner has applied for such purpose to the passport authorities. It appears that as per letter, dated 27.9.04 the petitioner is communicated by the passport authority that divorce deed duly registered by the Sub-Registrar is required to be produced. It is under these circumstances the petitioner has approached this court by preferring this petition.

3. I have heard Mr. Bhatt for the petitioner and Mr. Shaikh, Ld. Addl. Central Govt. Standing Counsel for the respondent authorities. It appears that on facts there is no dispute that the petitioner has made the application. However, in the affidavit in reply filed on behalf of the passport authority at para 4 it has been stated as under:

"I further say and submit that along with her application for passport dated 17.9.04 the petitioner had submitted divorce deed from her first husband duly notarised which is not acceptable for the issue of passport. As per Passport Manual 2001, issued by the Govt. of India, Ministry of External Affairs, CPV Divn, New Delhi, Chapter VIII Page No.56 para No.C(i) Divorce duly authenticated by court is required for reissue of passport in remarried name. Annexed hereto and annexed as Annexure "A" is a xerox copy of the relevant portion."

The relevant extract from the passport manual upon which reliance is placed on behalf of respondent authorities reads as under:

"C. Remarried applicants applying for change of name/change of spouse's name should be asked to produce:

- i) Divorce deed duly authenticated by court or Death certificate as the case may be in respect of the first spouse; or
- ii) Attested copy of the marriage certificate issued by the Registrar of Marriages or an affidavit signed by both husband and wife along with a joint photograph with the present spouse;
- iii) Photocopy of the present spouse's passport, if any,"

4. Mr. Shaikh for respondent for passport authorities submitted that the divorce deed duly authenticated by the court or the death certificate, as the case may be, in respect of the first spouse can only be said as sufficient and reliable proof for acceptance of the passport authority. Therefore, it has been submitted that in the absence of divorce deed duly authenticated by the court it can not be said that there is a valid divorce of the petitioner with Shri Chandulal Kanani and therefore the passport authority has called for the said document.

5. It appears that the instructions issued in the passport manual as such proceed on the basis that the divorce deed is required to be authenticated by the court in all cases. Had it been the case of seeking divorce or for a divorce through court, there may be the order of the competent court. It is admitted position that the

petitioner and her first husband Chandulal Kanani both are Hindus and belonging to Patel Community. Section 29(2) of the Hindu Marriage Act, 1955 provides that "Nothing contained in the Hindu Marriage Act shall be deemed to affect any right recognised by custom or conferred by any special enactment to obtain the dissolution of a Hindu marriage, whether solemnized before or after the commencement of Hindu Marriage Act." Therefore, if the customary divorce is permissible for dissolution of Hindu marriage the same as such is saved even as per the provisions of Hindu Marriage Act. There is no challenge to the divorce deed itself on the ground that the customary divorce in Hindu Patel community is not permissible. The only aspect objected is that such divorce deed must be authenticated by the court. Therefore, even if the divorce deed is entered into between the husband and the wife where customary divorce is permissible, it can not be said that in all cases such divorce deed can not be recognised as the proof divorce or dissolution of Hindu Marriage between wife and the husband unless so authenticated by the court. If the passport officer insists for authenticated divorce deed through the court in all cases of divorce, then in that case, the effect of section 29(2) of Hindu Marriage Act for saving the customary divorce shall stand nullified. If any dispute is raised by any person contending that such customary divorce is not permissible or dissolution of Hindu Marriage as per customary divorce is not based on any custom prevailing in the community it may stand on different footing, but in the absence of such dispute, it can not be said that in all cases wherever there is a divorce or dissolution of marriage such deed must be authenticated by the court and in the absence thereof same can not be accepted by the passport authority. At the most, with a view to ascertain the existence of any dispute or otherwise pertaining to the dissolution of Hindu Marriage as per custom prevailing in the community, the passport officer may insist for giving a public advertisement in the newspaper inviting objections by any person before accepting the dissolution of marriage as valid. He may also insist for the affidavits of two elders of the community who have signed as witnesses for such divorce deed. If any objection is raised by any person to such dissolution of marriage, then possibly the passport officer may be justified in insisting for authentication of divorce deed by the court, but, if no objections are raised in response to the public notice and if the affidavits of two elders of the community who have signed the divorce deed as witnesses are produced, the same can be said as sufficient proof for accepting the divorce deed for the purpose of issuance of passport leaving aside the other aspects which may arise between the parties to the divorce deed. Even otherwise also the registration of such divorce deed before Sub Registrar is not compulsory and therefore not to accept the divorce unless registered before Sub Registrar can not be said as proper in view of the present facts and circumstances and the observations made earlier.

6. In view of the aforesaid discussion, the stand taken by the passport authority for insisting for divorce deed duly registered before Sub Registrar or authenticated by the court, in the present case can not be sustained since the

customary divorce can be said as permissible unless it is objected by either party to the divorce deed or any person who is directly affected by the divorce deed.

7. Since it is also the case of the petitioner that after the customary divorce, she has married with Rameshkumar Jadavbhai Dhameliya and the affidavit is produced and the application for registration is pending before issuance of passport to the petitioner on the name of Twinkle Natvarlal Sabhaya as wife of Rameshkumar Jadavbhai Dhameliya, the passport officer may insist for the production of registration certificate of marriage of the petitioner.

8. In view of the above discussion, the communication of the respondent passport authority insisting for production of divorce deed duly registered by the Sub Registrar or authenticated by the court is quashed and set aside with the direction to the passport authority to consider the application of the petitioner in the light of the observations made by this court hereinabove.

It is clarified that as observed earlier in this judgment, the passport authority may insist for public notice in respect of divorce deed for dissolution of marriage between the petitioner and Chandulal Kanani and may also insist for the affidavits of two elders of the community who are the signatories for the divorce deed and if no objection is filed by any person in response to the public notice the passport officer shall accept the divorce deed for dissolution of marriage between the petitioner and Chandulal Kanani as legal and valid and thereafter if the marriage registration certificate is produced by the petitioner for her marriage with Rameshkumar Jadavbhai Dhameliya, the passport officer shall issue passport to the petitioner after examining the other aspects in accordance with law but as if she is the wife of Rameshkumar Jadavbhai Dhameliya. The aforesaid exercise shall be completed as early as possible preferably within a period of two months from the receipt of writ of this court.

It is made clear that in any case if any objections are filed in response to public notice pertaining to divorce deed, it would be open to the passport officer to insist for authenticated divorce deed from the competent court before issuing the passport.

9. Petition is allowed to the aforesaid extent. Rule is partly made absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs.