

(2009) 05 GUJ CK 0063

In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 15110 of 2007

Vijay Jayantilal Chavda and Another

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 13-05-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Evidence Act, 1872 — Section 113A

Penal Code, 1860 (IPC) — Section 306, 498A

Citation : (2009) 05 GUJ CK 0063

Hon'ble Judges : R.P. Dholakia, J

Bench : Single Bench

Advocate : P.J. Yagnik 1 - 2, for the Appellant; Chetanaben Shah, APP for Respondent 1 and Chirag M. Pawar, for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

R.P. Dholakia

1. Heard learned Counsel for the applicants, Mr. P.J. Yagnik, learned APP, Ms. Chetanaben Shah for the opponent No. 1 and learned Counsel, Mr. Chirag M. Pawar for the opponent No. 2.

2. Against the present applicants, original accused Nos. 3 and 4, who are brother-in-law and sister-in-law respectively of the deceased and other persons, complaint has been lodged by the complainant-brother of the deceased with Vinchhiya Police Station for the offences punishable under Secs. 498-A and 306 of IPC registered as C.R. No. I-0029 of 2007. During the course of investigation, all were arrested and at the end of investigation, charge-sheet has been submitted against five accused. Upon their arrest, they preferred applications and they were released on bail by the High Court.

3. This petition has been filed by the brother-in-law and sister-in-law of the deceased u/s 482 of the Code of Criminal Procedure praying for quashing of the

complaint in question qua them.

4. It is firstly argued by the learned Counsel for the applicants that there is a delay in filing the FIR. Secondly, there is no ingredients of the offence in the FIR which prima facie establish from the complaint and hence, complaint against them is required to be quashed. Thirdly, the applicants were staying separately from the deceased. Fourthly, the applicant sister-in-law was taking treatment from one Dr. Firoz G.Bhuvar for a considerable period as she was carrying. Documents to that effect have been produced with the petition from pages 37 to 63. Lastly, there is no direct or indirect involvement of the applicants with the crime in question and, therefore, qua them, complaint is required to be quashed.

5. Learned Counsel for the respondent No. 2, Mr. Chirag M.Pawar, has argued that FIR discloses the prima facie ingredients of the offence as well as involvement of the applicants with the crime. Once the charge-sheet is filed, it is required to be presumed that there is a prima facie case. It is further argued that span of marriage life is 15 months only and, therefore, prosecution will also get the benefit of presumption u/s 113-A of Indian Evidence Act. It is further argued that nobody would like to die at a young age having an infant of 2-2 months. It is also argued that incident in question has taken place within four corners of the house of the accused and therefore, Court should not ask for specific evidence against the accused because the witnesses are either the accused or nearest relatives of the accused.

6. I have gone through the FIR. It appears that the applicants are brother-in-law and sister-in-law respectively against whom and others complaint has been lodged. As far as previous statement of the witnesses is concerned, it has been categorically mentioned therein by the witnesses that on the date of incident, they were not knowing about the incident in detail and, therefore, they have categorically stated that they will inquire and if required will state. That fact is also required to be kept in mind by the Court. This is the thing which is required to be appreciated or re-appreciated by the court below because that statement might have been recorded while investigation in accidental note.

7. It is required to be noted that span of marriage life is one year and three months i.e. 15 months only. The deceased was having an infant child of 2-3 months. Nobody would like to die at a young age without any reason and, therefore, legislature has also taken care and introduced Section 113-A in the Indian Evidence Act for giving benefit of presumption to the prosecution. Here in this case also, said benefit will be available to the prosecution.

8. As far as documentary evidence produced at pages 37 to 63 are concerned, they are treatment papers of present applicant No. 2 and deceased when both were carrying and, therefore, periodically they have visited the doctor and doctor has prepared a sheet. They have nothing to do with the present case. At the most, it can be said to be a proof that they were carrying. As far as delay is concerned, it has been properly explained in the FIR itself. Not only that,

presence of the accused is also established. It has been specifically stated in the FIR that present applicants were staying in a joint family along with others where the incident has taken place. It is also required to be noted that there is direct allegation against the present applicants in the FIR itself. Mr. Yagnik has tried to read the whole charge-sheet. I have requested him not to read it. Due to his insistence, I have permitted him. However, what is required to be read for the purpose of quashing of the complaint is the FIR and if it discloses the ingredients prima-facie involving the accused with the crime in question, complaint cannot be quashed. Moreover, delay is also explained. In this type of offence, generally offence takes place in the matrimonial home in presence of accused and their family members and, therefore, it is unfair on the part of the otherside to demand any oral evidence or documentary evidence from the prosecution when they themselves are prima-facie involved as accused. As far as present applicants are concerned, merely they are brother-in-law and sister-in-law of the deceased, complaint cannot be quashed. At the cost of repetition, I say that there is a prima facie evidence to connect the applicants-accused with the crime in question which discloses from the FIR and, therefore, this petition is required to be dismissed.

9. This petition is accordingly dismissed. Rule is discharged. Interim relief stands vacated. Trial Court is directed to proceed with the matter.

10. I make it clear that what has been observed in this judgment has been at the insistence of the learned Counsel for the applicants as he read the papers of the charge sheet and hence, those observations have been only for the purpose of deciding this petition and will not come in the way of parties at the time of trial.