

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 146 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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GITABEN D RATHWA

Versus

STATE OF GUJARAT

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Appearance:

MR KB PANDE for Petitioner

Mr K M Mehta, APP for Respondent No. 1

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 30/04/97

ORAL JUDGEMENT

The petitioner Gitaben Rathwa, a victim of alleged rape has approached this Court by way of Revision Application under section 397 of the Criminal Procedure Code, seeking direction to quash the order of the Addl. Sessions Judge, Baroda, Camp: Chhotaudepur dated 21.3.1997 in Atrocities Case No.13/96 in the case of State of Gujarat vs. Harivallabh Parikh.

2. By the impugned order, the learned Trial Judge, has granted the prayer of the accused keeping in view the provisions of section 301 of Cr.P.C. He has prevented the learned counsel for the victim from addressing the Court. He has also directed that if the victim desires to give any application or desires to say anything, she can do so through the Public Prosecutor.

3. The controversy appears to have been arisen on a grievance voiced by the learned counsel for the victim that charge-sheet has been filed by the police on the basis of complaint No.I-110/96 and not on the basis of the complaint filed by the victim before the Judicial Magistrate First Class, Chhotaudepur, who had directed the Special IGP, CID (Crime) Ahmedabad to investigate the matter. The said direction was given under section 156(3) of Cr.P.C. The learned Magistrate while giving direction observed that such a direction is necessary for trustworthy, effective, responsible and careful investigation of the case. Thus, the case was registered as Enquiry Case No.9/96. After the said order, the local police, instead of transferring the matter to IGP, as directed by the learned Magistrate registered a fresh case on the basis of alleged oral report of Gitaben, the victim. The said case has been registered as Case No.I-110/96. A grievance was made that there was no occasion for registering the case No.I-110/96, as Enquiry Case No.9/96 had already been registered as per the direction of the learned Magistrate. Learned Advocate also invited the attention of the Trial Judge that in the charge-sheet, the complaint on the basis of the Enquiry Case No.9/96 has been registered, has not been included. An application in this regard was also made. The learned Advocate for the victim also invited the attention to certain observations of this court made in the order while disposing the application for anticipatory bail filed by the accused Harivallabh Parikh. He also referred to a decision of the Apex Court in the case of Bodhisattwa Gautam v. Miss Subhra Chakraborty, reported in AIR 1996 SC 922. Referring the said judgment, it was contended by the learned Advocate that a victim in a rape case deserves certain assistance from the court for proper conduct of the trial.

4. Learned Advocate for the accused moved an application before the Trial Judge and relying on section 301(2) of Cr.P.C., contended that the complainant has no locus in a criminal case. The Counsel for the complainant can address only through Public Prosecutor.

5. I have heard the learned Counsel for the victim Mr K P Pande and Mr K M Mehta, learned APP. I had also directed the Public Prosecutor conducting the trial to be present in the court. Mr Desai, learned APP who conducted the trial is present in the court. Certain questions were asked to him with respect to the conduct of the trial. He has admitted that the complaint on the basis of which the learned Magistrate directed the enquiry and on which enquiry case No.9/96 was registered, has not been included in the charge-sheet. I had an occasion to deal with the matter on an earlier occasion on an application filed by the accused Harivallabh seeking direction under section 438 of Cr.P.C. The similar grievance by the victim was voiced, at that stage as well with regard to Enquiry Case No.9/96 and case No.I-110/96 which can be noticed in para 5 and 6 of the said order. Keeping in view the serious allegations made against the local police and the influence of the accused, this Court gave a direction on 7.6.1996 that as ordered by the learned Magistrate, the investigation be forthwith handed over to Special I.G.P., C.I.D. (Crime) Ahmedabad on 7.6.1996 itself. This order was required to be made because inspite of the order of the learned Magistrate, the local police did not transfer the case to the IGP, CID (Crime). Not only this, while the complaint enquiry case No.9/96 was registered, the police on another alleged complaint registered a case as C.R.No.I-110/96. Serious allegations have been made with respect to registration of the said case. It is unfortunate that the trial Judge, instead of looking into the grievance of the victim and to ensure free and fair trial, passed the impugned order shutting the mouth of the victim. So far as the legal position enunciated in the order is concerned that cannot be disputed. However, while dealing with this aspect, the learned Judge has completely overlooked the order of this court passed in Special Criminal Application No.648/96 in the case of HARIVALLABH PARIKH v. STATE OF GUJARAT, reported in 1997 (1) GLR 638. The learned trial Judge has mechanically passed the order even overlooking the waighty observations of the Supreme Courut as to how a case should be dealt with by a Trial Judge in a case of rape. It will be profitable for the learned Judge if he can go through the judgment of the Apex Court in the case of Bodhisattwa Gautam's case (supra) and the various judgments of the Supreme Court referred therein. Looking to the attitude to which the Judge has adopted and the way he has ignored the judgment of this court and the Apex Court, in my view, the case like the one in hand should be immediately withdrawn from the said court. I may also mention here that when I put certain questions

to the Public Prosecutor Mr Desai conducting the trial, he was not in position to give satisfactory reply. I also noticed that he was being interrupted and prompted by one gentleman sitting behind him, who was later on identified as an Advocate, named J M Baria, Counsel for the accused. This also speaks of the conduct of the learned Public Prosecutor conducting the trial.

7. Section 483 of Cr.P.C. cast a duty on the High Court to exercise powers of superintendence over the subordinate courts to ensure that there is expeditious and proper disposal of cases.

8. Considering all facts and circumstances of the case and in order to secure ends of justice, I direct that Atrocities Case No.13/96 be withdrawn from the file of the Addl.Sessions Judge, Baroda, Camp: Chhotaudepur. The learned Sessions Judge, Baroda will pass appropriate order either to keep the said trial case with him or assign it to any other court. It is further directed that the State Government shall appoint a Special Public Prosecutor to conduct the aforesaid case within 15 days from the date of receipt of the writ. Learned Counsel for the victim should be allowed to participate in the trial keeping in view the observations of the decision of the Apex Court in Bodhisattwa Gautam's case (supra). The absolute direction not to allow the Counsel for the victim to address the court is quashed and set aside, keeping in view the peculiar facts of the case.

Rule made absolute to the aforesaid extent.

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msp.