

Bhadresh Bipinbhai Sheth v. State of Gujarat & Another

AUTHOR Durgesh Singh

PUBLISHED 28 October 2015

Introduction

The present Appeal was filed before the Supreme Court challenging the validity of the judgment passed by the Gujarat High Court, cancelling the anticipatory bail which was granted to the Appellant by the Additional Sessions Judge, Ahmedabad City Sessions Court.

Brief Facts

The Appellant and the Prosecutrix (Complainant) were neighbors at the relevant time. The Prosecutrix filed a Complaint on 29.05.2001, alleging that the Appellant had harassed, raped, emotionally blackmailed and threatened her. On 31.05.2001, the statement of the Prosecutrix was recorded by the Investigating Officer. Subsequently, an FIR was registered against the Appellant under Section 506(2) of Indian Penal Code ("IPC"). Thereafter, the Appellant was granted bail by the Metropolitan Magistrate ("M.M.").

In the year 2010, the Prosecutrix made an application for addition of charge of rape under Section 376 of IPC. The M.M. held that said application should be taken into consideration only after chief examination of the Prosecutrix. Being aggrieved by such order, the Prosecutrix challenged the said order before City Session Judge, Ahmedabad. The matter was remanded back to the M.M. with the direction that application shall be heard afresh in its entirety after giving opportunity to both parties. On 31.03.2012 the M.M. directed the police to carry out special investigation under Section 178(8) of Code of Criminal Procedure ("Code"). Being unsatisfied, the parties challenged the above order. The matter reached the Hon'ble Supreme Court. Ultimately, the police filed a revised charge-sheet stating that a prima facie case of rape is also made out. In view of addition of charge under Section 376 of IPC, the M.M. passed the order on 25.04.2013 for committal of proceedings to the Session Court and for taking the Appellant into custody. The Appellant moved the City Sessions Court at Ahmedabad for grant of anticipatory bail which was ultimately granted on 18.05.2013. The Prosecutrix filed a Criminal Revision Petition against the said order of grant of anticipatory bail, which was allowed by the Gujarat High Court vide the impugned order dated 18.07.2014, cancelling the anticipatory bail granted to the Appellant. The legality of said order was in question before the Supreme Court.

Core Issues

- I. Whether, in the circumstances of the case, Appellant was entitled to anticipatory bail?
- II. Whether the High Court was justified in cancelling the anticipatory bail?

Analysis of Issue I

The FIR was registered on the basis of statement recorded on 31.05.2001 and the charge-sheet was filed making out a prima facie case only under Section 506(2) of IPC, Further the M.M. framed charges under section 506(2) only. She objected for the first time in 2008 (almost after 7 years of framing of charges) for not including the charge of rape under Section 376 of the IPC, and filed an application in the year 2010 for the same, on the grounds that her complaint dated 29.05.2001 which she had given to the Assistant Commissioner of Police (ACP), be treated as her FIR. In a matter like this, where allegations of rape pertains to a period almost two decades ago, and when no charge was framed under Section 376 IPC in the year 2001, and even the Prosecutrix did not take any steps for almost a decade and the charge under Section 376 IPC is added only in the year 2014, the Supreme Court observed that there was no reason that the Appellant should not be given the benefit of anticipatory bail. The inaction of the Prosecutrix is also a contributory factor.

Analysis of Issue II

The High Court has remarked that the Prosecutrix had to run a marathon for getting her Complaint registered as an FIR and more particularly for addition of charges under Section 376 of IPC. In lieu of the facts of the case, Supreme Court is of the view that the said observation of the High Court is not correct. The High Court has wrongly observed that it was the Appellant who was able to drag the matter for decade before the complaint was registered under relevant provisions. Therefore the High Court of Gujarat has erred in its decision of cancelling the Appellant's anticipatory bail.

Judgement

The Supreme Court opined that no purpose would be served in compelling the Appellant to go behind bars, as an under trial, by refusing the anticipatory bail in respect of alleged incident which is 17 years old and for which the charge is framed only in the year 2014. Investigation is complete and there is no allegation that the Appellant may flee the course of justice. The FIR was registered and the trial commenced in the year 2001; albeit with the charge framed under Section 506 (2) IPC, and during this period, the Appellant has participated in the proceedings. There is no allegation that that during this period the Appellant had

tried to influence the witnesses. In the aforesaid circumstances, even when there is a serious charge levelled against the Appellant, that by itself should not be the reason to deny anticipatory bail when the matter is examined keeping in view other factors enumerated above. As a result, the Supreme Court set aside the impugned judgement and restored the Order dated 18.05.2013 of the Ld. Additional Sessions Judge granting anticipatory bail to the appellant on the condition mentioned in the said Order.