

2017 SCC OnLine Guj 2493

In the High Court of Gujarat at Ahmedabad
(BEFORE R.M. CHHAYA, J.)

Dharamraj Bhanushankar Dave ... Petitioner(s);
Versus

State of Gujarat and Others ... Respondent(s).

Special Civil Application No. 1854 of 2015

Decided on January 19, 2017

Advocates who appeared in this case :

Mr. Raj A. Trivedi, Advocate for the Petitioner(s) No. 1

Ds Aff. Not Filed (N) for the Respondent(s) No. 5

Mr. Janak Raval, AGP for the Respondent(s) No. 1

Law Officer Branch, Advocate for the Respondent(s) No. 2

Mr. Devang Vyas, Advocate for the Respondent(s) No. 3 - 4

Mr. Hardik P. Modh, Advocate for the Respondent(s) No. 6

Mr. Hemang M. Shah, Advocate for the Respondent(s) No. 2

Mr. Nikunt K. Raval, Advocate for the Respondent(s) No. 3-4

Notice Served by DS for the Respondent(s) No. 1

The Order of the Court was delivered by

R.M. CHHAYA, J.:— Heard Mr. Raj Trivedi, learned advocate for the petitioner, Mr. Janak Raval, learned AGP For respondent no. 1, Mr. Hemang M. Shah, learned advocate for respondent no. 2, Mr. Nikunt K. Raval, learned advocate for respondents no. 3 and 4 and Mr. Hardik Modh, learned advocate for respondent no. 6.

2. By way of this petition under Article 226 of the Constitution, the petitioner has prayed for the following main relief—

“[B] YOUR LORDSHIP may be pleased to issue an appropriate writ/order or direction to the respondents to as to enable permanent restraint of free public exhibition of the judgment and order of this Hon'ble Court dated 30.10.2007 passed in Criminal Appeal No. 1691 of 2005 over the internet caused by the Respondent No. 5/6.”

3. The record of the petition indicates that the petitioner was accused in an offence registered as C.R. No. 1-27/01 registered at Panchkoshi Division A Police Station, Jamnagar for alleged offences under Sections 34, 120B, 201, 302, 364, 4 04 of the Penal Code, 1860. The record indicates that prosecution was launched, charge-sheet was filed and the case was committed to the learned Sessions Court, Jamnagar which came to be registered as Sessions Case No. 82/01. At the end of the trial, by a judgment and order dated 19.11.2004, the petitioner came to be acquitted. As averred in the petition, the judgment was challenged by the State before this Court being Criminal Appeal no. 1691/05 and the judgment of the Sessions Court came to be confirmed by the Division Bench of this Court, which has become final. It is the case of the petitioner that the petitioner wanted to migrate to Australia and when he undertook the procedure for the same, it was found that respondent no. 5 through respondent no. 6 had published the said judgment, even though the judgment was non-reportable. It is the case of the petitioner that because of such publication, the judgment is freely available on the internet and the same is against the classification made by this Court. It is also a matter of record that thereafter, the petitioner approached respondents no. 5 & 6 as averred in para 3.7 of the petition. However, as

the attempts failed for deletion of the same, the present petition is filed.

4. Mr. Raj Trivedi, learned advocate appearing for the petitioner has pressed the grounds which are enumerated in para 4 of the petition and has submitted that respondents no. 5 & 6 have no authority to publish an unreportable judgment. It was also alleged that such overzealous act of respondent no. 5 is nothing but indisciplined and without any authority and the same has adversely affected the personal and professional life of the petitioner. It was also contended that making available judicial orders of several courts of law would be exclusive domain of its respective Registrar and respondents no. 5 and 6 have no authority to publicly exhibit such orders. Mr. Raj therefore contended that the petition deserves to be considered and allowed as prayed for.

5. Mr. Nikunt Raval, learned Central Government counsel has relied upon the affidavit-in-reply filed by the respondent no. 3 authority and infact has contended that respondent no. 3 is not at all a necessary party.

6. Mr. Modh, learned counsel appearing for respondent no. 6 has also relied upon the affidavit filed by respondent no. 6 and denying the contention raised by the petitioner, also contended that respondent no. 6 is neither a proper nor necessary party and has also not given the facility of engine. Mr. Modh contended that Google Search is an automated search engine which uses software known as "crawlers" to crawl the internet on regular basis and find sites to add to its index. It was contended that respondent no. 6 is in no way connected with publication on the internet and is not in a position both as legal and a technical matter to comply with any of the orders and in fact submitted that respondent no. 6 is appointed as reseller of advertising space on Google Inc's Adwords program in India.

7. Having heard the learned counsel appearing for the parties, it deserves to be noted that the High Court is the Court of record. Rule 151 of the Gujarat High Court Rules, 1993 provides that copies of documents in any civil or criminal proceeding and copies of judgment of the High Court can be given. The said Rules also further provides that copy of the judgment of the High Court shall not be given to persons other than parties thereto without the order of the Assistant Registrar. An application for copies of documents or judgments made by third parties shall be accompanied by an affidavit stating the grounds on which they are required, provided that such affidavit shall be dispensed with in case of application made by or on behalf of the Union of India or State Government or the Government of any foreign State. The petitioner has not been able to even prima facie point out that provisions of which law are attracted in this petition. The petitioner has also not been able to point out any provision whereby the respondents no. 5 and 6 can be restrained by this Court in exercise of powers under Article 226 of the Constitution. The prayers prayed for in this petition would not amount to any violation of Article 21 of the Constitution as averred by the petitioner. The judgment in appeal is part of the proceedings and the said judgment is pronounced by this Court and therefore, merely publishing on the website would not amount to same being reported as the word "reportable" used for judgment is in relation to it being reported in law reporter. As pointed out earlier, even under the relevant High Court Rules, a third party can get a copy of the said judgment. In light of the aforesaid therefore, the petition deserves to be dismissed and no interference is called for by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution. It would be open for the petitioner to take any other recourse, if available, in law.

8. The petition is disposed of. Notice discharged.

9. No costs.



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