

(2020) 01 GUJ CK 0046

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 202 Of 2020

Ashwin

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 07-01-2020

Acts Referred:

Indian Penal Code, 1860 — Section 363, 366, 376
Protection Of Children From Sexual Offences (POCSO) Act, 2012 — Section 4, 6
Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(1)w(1), 3(2)(5)
Code Of Criminal Procedure, 1973 — Section 482

Citation : (2020) 01 GUJ CK 0046

Hon'ble Judges : S.H.Vora, J

Bench : Single Bench

Advocate : Jucky Lucky, Manan Mehta

Final Decision : Allowed

Judgement

S.H.Vora, J

[1] Learned advocate Mr. Ghanshyam Patel, states that he has instructions to appear for the respondent No.2 - original complainant and victim Ms. Nimaben.

[2] Learned advocate Mr. Ghanshyam Patel confirms identity of the respondent No.2 - original complainant and victim Ms. Nimaben, who are present in the Court and admits correctness and genuineness of the affidavit filed by them through learned advocate Mr. Ghanshyam Patel, which are produced before this Court and the same are ordered to be taken on record.

[3] Rule. Learned A.P.P. waives service of Rule for respondent No.1. Learned APP objects quashment of present proceedings on the premise of settlement.

[4] With the consent of learned advocate for the applicant and learned advocate for the complainant and the victim, present application is taken up for final disposal today.

[5] By way of the present application under Section 482 of the Code of Criminal Procedure, 1973 (for short, the 'Code'), the applicant prays for quashing and setting aside the F.I.R. being C.R.No.I-296 of 2016 registered with Sector 7 Police Station, Gandhinagar for the offences punishable under Sections 363, 366, 376 of the Indian Penal Code, under the provisions of section 4,6 of the POCSO Act and u/s 3(2)(5), 3(1)w(1), 3(2)(5) of the Atrocities Act.

[6] Learned advocate for the applicant has taken this Court through the factual matrix arising out of the present application.

[7] It is now stated at bar that the applicant, the complainant and the victim have settled the dispute amicably and the complainant and the victim has no grievance against the applicant. Not only that the victim and the applicant have married 18.4.2017 as per marriage registration certificate at Annexure B and out of said wedlock, they have delivered a baby child on 31.7.2018 as per birth registration certificate annexed at Annexure C.

[8] It is in light of this aspect, the applicant, complainant and the victim urged that impugned FIR may be quashed.

[9] Learned advocate appearing for the the complainant and victim points out that since the victim has already married with the applicant, it will be more in her interest that the impugned criminal proceedings may be quashed, as otherwise, their marital life will be put into jeopardize and there is no one to take care of her as well as her child.

[10] It is now settled that in serious offence as one u/s 376 of the IPC cannot be subject matter of quashment of the proceedings initiated u/s 482 of the Code of Criminal Procedure, 1973 on the ground of settlement between the accused and the victim. Suffice it to refer the various decisions rendered by the Hon'ble Apex Court on such aspect, more particularly, in cases of Anita Maria Dias Vs. State of Maharashtra reported in (2018) 3 SCC 290, Shimbu Vs. State of Haryana reported in (2014) 13 SCC 318 and Parbatbhai Ahir Vs. State of Gujarat reported in (2017) 9 SCC 641. However, this Court cannot overlook the fact that the applicant and the victim girl got married and out of said wedlock, they have a child aged about more than one year. Such situation is an exception to the approach to deal with the proceedings initiated u/s 482 of the Code of Criminal Procedure, 1973 on the basis of settlement between the victim and the accused and for the pre-dominant purpose of the welfare of the victim to ensure her better future life, it is just and proper for this Court in exercise of extraordinary inherent powers u/s 482 of the Code of Criminal Procedure, 1973 could quash the impugned criminal proceedings on the ground of settlement between the parties in cases where the accused has married and the complainant and the victim insist for quashment of impugned criminal proceedings.

[11] In view of the aforementioned aspect, more particularly, in light of the affidavit filed by the complainant and the victim, this Court is inclined to consider the plea for quashment of the impugned criminal proceedings, as otherwise, it

will detrimentally affect the family life of the victim girl and even the balance and harmony that could be achieved by them in the resolution of disputes that again be irrecoverably lost.

[12] Since now, the dispute with reference to the impugned F.I.R. is settled and resolved by and between parties which is confirmed by the complainant and victim through their learned advocate, who confirms the correctness and genuineness of the affidavits, the trial would be futile and any further continuation of proceedings would amount to abuse of process of law. Therefore, the impugned F.I.R. is required to be quashed and set aside in view of peculiar facts of the case being exception to the general principle of law to decline the quashment of proceedings of the nature like present one.

[13] In view of this position, this application is allowed. Impugned F.I.R. being C.R.No.I-296 of 2016 registered with Sector 7 Police Station, Gandhinagar and all other proceedings taken out in pursuance thereof against the present applicant are hereby quashed and set aside. The applicant will produce certified copy of this order before the concerned learned Sessions Court and also before the investigating officer for necessary action. Rule is made absolute to the aforesaid extent. Direct service is permitted today.

[14] The concerned jail authority is directed to release the applicant forthwith, if not required in any other offence.