

(2020) 08 GUJ CK 0115

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 4956 Of 2020

Dipakbhai Bhimjibhai Velani

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 11-08-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 114, 363, 366, 376

Citation : (2020) 08 GUJ CK 0115

Hon'ble Judges : Ashutosh J. Shastri, J

Bench : Single Bench

Advocate : Rajendra D Jadhav, JK Shah

Final Decision : Allowed

Judgement

Ashutosh J. Shastri, J

1. Present application under Section 482 of the Code of Criminal Procedure is filed for the purpose of seeking following reliefs:-

â??(A) That this Honâ??ble Court may be pleased to admit and allow this petition.

(B) That this Honâ??ble Court may be pleased to quash and set aside the complaint registered as CR No.I-86 of 2012 dated 09.05.2012 under

Sections 363, 366, 376 and 114 of the Indian Penal Code against the present applicant, lodged by the respondent No.2 registered with Kapodra Police

Station, Surat and Sessions Case No.376 of 2019 pending before addl. District Judge at Surat and all the supplemental, incidental and consequential

proceedings arising out of the said FIR in the interest of justice.

(C) Pending hearing and final disposal of this petition, this Honâ??ble Court be pleased to stay the further proceedings in instant complaint.

(D) ? ? ? ? ? ? ? ? ? ?

2. Complainant namely Dhanjibhai Karshanbhai Kalathiya in his complaint dated 9.5.2012 has alleged that he is a labourer, residing in Surat and his

native place is Gam Limgadi, Taluka Mahuva, District Bhavnagar. It was alleged that he has four kids and elder daughter named Kajal aged about 17

years was missing abruptly and missing complaint was lodged on 25.4.2012. The case of the petitioner is that on the contrary, the petitioner and the

daughter of the complainant both were in deep love and affection, decided to marry and the petitioner has been arraigned as an accused falsely in the

prosecution. In fact, both, i.e. the petitioner and the daughter of the complainant, are residing as husband and wife peacefully and out of the wedlock,

on the contrary, two children have been born and as such, by exercising the inherent jurisdiction, the complaint be quashed.

3. Learned advocate Mr. Rajendra Jadhav appearing on behalf of the applicant has submitted that the dispute is already amicably resolved between

the parties and there is a specific affidavit filed by complainant Dhanjibhai Karshanbhai Kalathiya, reflecting on page 36. Additionally, even the

affidavit of the victim is also filed, which is placed on record, which was affirmed by the victim on 6.3.2020. After taking note of such affidavit, Mr.

Jadhav has pointed out that the Coordinate Bench of this Court was initially pleased to pass an order on 6.3.2020 and pursuant to the notice having

been issued, the complainant is being represented by learned advocate Ms. Jyoti H. Goyani, who was present in video conference and has specifically

identified the complainant who was present on the screen and learned advocate has undertaken to file her Vakalatnama during the course of the day

and has specifically submitted that the complainant in true letter and spirit has resolved the dispute and to that effect, specific affidavit is filed on

3.3.2020, placed on record on page 36 onwards. Apart from that, learned advocate has drawn the attention of the Court to the specific affidavit filed

by Kajalben, daughter of the complainant, stated to be the victim, who also confirmed the fact of settlement, which took place and additionally, learned

advocate has also fortified the circumstance that out of the wedlock, two children have been born and at present, both are residing happily as husband

and wife and therefore, requested the Court to quash the complaint by consent of the complainant.

4. Learned APP Mr. J.K. Shah has submitted that though there is a serious offence allegedly committed by the accused person, but now if this being the undisputed fact that both are residing as husband and wife and out of the wedlock, two children have been born, Mr. Shah has left the matter to the discretion of this Court without much resistance.

5. Having heard learned advocates appearing for the parties and having gone through the material on record, it appears clearly from the record that

the complainant has already resolved the dispute amicably with the accused and the family. Further, the victim has also willingly filed the affidavit to

the effect that out of the wedlock, one elder daughter aged about 6 years and younger son aged about 2 years have been born and both are happily

residing and even the family members have also accepted them. Additionally, on video conference, learned advocate has identified the complainant

who was present on the screen and has confirmed the fact of the amicable settlement. So, in view of this peculiar background of fact, when both the

parties have willingly resolved the dispute inter-se, there is no point in allowing the prosecution to go on. Hence, considering the fact that such kind of

disputes have been taken into consideration by the coordinate Benches of this Court and in the said background of settlement, complaints have been

quashed, the Court is inclined to adopt the said approach. Accordingly, the Court finds that case is made out for quashing of the complaint.

6. Several decisions of the Coordinate Benches have been brought to the notice of this Court, in which, in similar set of circumstance, complaints have

been quashed by consent. This Court has considered the said decisions and has arrived at a conclusion that the case is made out to quash the

complaint.

7. Since this Court is considering the decisions of the Coordinate Benches of this Court, few observations contained in one of the decisions, i.e. order

dated 27.8.2019 in Criminal Misc. Application No.16219 of 2019, are reproduced hereinafter:-

[9] 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 Honâ??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 two children. 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.

[10] In view of the aforementioned aspect, more particularly, in light of the statements made by respondent No.2 and the victim supported by duly

affirmed affidavit placed on record through their learned advocate Mr. Jarjis Khan, which is ordered to be taken on record, this Court is inclined to

consider the plea for quashment of the impugned FIR, 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.

[11] 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 original

complainant through his learned advocate, 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.

8. Hence, the application is allowed. Impugned FIR, being C.R. No.I-86 of 2012 registered with Kapodra Police Station, Surat City and all other

proceedings taken out in pursuance thereof against the present applicant are hereby quashed and set aside. The applicant will produce the certified

copy of this order before the concerned learned Sessions Court and also before

the investigating officer for necessary action.

9. The Registry is directed to communicate this order by fax or e-mail to the concerned authority.