

(2020) 01 GUJ CK 0180

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 18056 Of 2019

Hiteshbhai Jitendrabhai Bakrochiya

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 16-01-2020

Acts Referred:

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

Citation : (2020) 01 GUJ CK 0180

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

Bench : Single Bench

Advocate : Sanjay Prajapati, BH Solanki, Pranav Trivedi

Final Decision : Allowed

Judgement

S.H.Vora, J

1. This Court vide order dated 24.09.2019 has passed following order :-

“Learned advocate Mr.B.H. Solanki appears for victim girl “ Ms.Anjaliben. According to the victim girl, she and the present applicant

got married on 07.08.2018 and the same is duly registered with Marriage Registrar on 27.08.2018. Hence, issue notice to respondent No.2,

making it returnable on 21.10.2019. Learned A.P.P. Mr.L.B. Dabhi waives service of notice for the respondent “ State. Direct service,

qua respondent No.2, through the concerned police station, is permitted.”

2. Learned advocate Mr. B. H.Solanki states that he has instructions to appear for the victim girl Ms.Anjaliben. He is permitted to file his appearance.

He has produced affidavit of the victim girl “ Ms.Anjaliben, which is ordered to be taken on record.

3. The victim girl is present before the Court and admits correctness and genuineness of the affidavit filed by her through her learned advocate.

Learned advocate Mr.B.H.Solanki identifies the victim girl and confirms correctness and genuineness of the affidavit filed by her.

4. Rule. Learned A.P.P. and learned advocate Mr. B.H.Solanki waive service of Rule for respondent Nos.1 and the victim girl respectively.

5. With the consent of learned advocate for the applicant and learned advocate for respondents, present application is taken up for final disposal today.

6. By way of the present applications 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-01 of 2018 registered with Viramgam Town Police Station, Ahmedabad for the offence

punishable under Sections 363, 366, 376 of IPC and under the provisions of the POCSO Act.

7. Learned advocate for the applicant has taken this Court through the factual matrix arising out of the present applications.

8. It is now stated at bar that the applicant and the victim have settled the dispute amicably and the victim has no grievance against the applicant. Not

only that the victim and the applicant have married on 07.08.2018 and same is duly registered with Marriage Registrar on 27.08.2018.

9. It is in light of this aspect, the applicant and the victim urged that impugned criminal proceedings being impugned FIR may be quashed.

10. Learned advocate for the 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 jeopardy and there is no one to take care of her.

11. 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. 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 victim insist for quashment of impugned criminal proceedings.

12. In view of the aforementioned aspect, more particularly, in light of the statements made by the victim supported by duly affirmed affidavit placed

on record through her learned advocate, 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.

13. 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 victim

through her 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.

14. In view of this position, this application is allowed. Impugned F.I.R. being C.R.No.I-01 of 2018 registered with Viramgam Town Police Station,

Ahmedabad and all other proceedings taken out in pursuance thereof against the present applicant and proceedings of POCSO Case No.4 of 2018

pending before the learned Special Court (POCSO), Viramgam 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.