

(2011) 08 GUJ CK 0047
In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 2137 of 2010 and Special Criminal application No. 353 of 2010

Jimi Dasrath Patel

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 10-08-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 114, 366

Citation : (2011) 08 GUJ CK 0047

Hon'ble Judges : M.B. Shah, J

Bench : Single Bench

Advocate : Arif A. Shekh, for the Appellant; L.R. Pujari, APP. for Respondent 1 and B.N. Limbachia, for Respondent 2, for the Respondent

Judgement

M.D. Shah, J.

1 Both Cri. Misc. Appln. No. 2137 of 2010 and Special Criminal Appln. No. 353 of 2010 have been filed by the applicants-original accused for quashing of FIR registered as C.R. No. I-64 of 2010 registered with Sarkhej Police Station.

2 A complaint has been filed by one Navinbhai Keshavlal Patel-original complainant with Sarkhej Police Station for the offences punishable under Sections 366 and 114 of IPC against the present applicants registered as C.R. No. I-64 of 2010 with Sarkhej Police Station.

3 Heard learned advocate, Mr. Arif A. Shekh for the applicants-original accused, learned APP, Mr. L.R. Pujari for the State and learned advocate, Mr. B.N. Limbachia for the complainant. The complainant, who is father of the girl is also present before this Court.

4 It is submitted by learned advocate on instructions that daughter of the complainant has married with Jimi Dasrath Patel, who is the applicant of Cri. Misc. Appln. No. 2137 of 2010 and they are staying as wife and husband. Out of

the said wedlock, a baby child is also born and they are residing happily without any difficulty. It is also submitted that as she got married with the Jimi Dasrath Patel against the will of her parents and relatives, present complaint has been filed against her husband and others. Since they are leading a better matrimonial life, they have no grievance now and hence, it is requested that the complaint be quashed.

5 It is pertinent to note that victim is major and marriage certificate is also placed on record to show that marriage of the daughter of the complainant took place with Jimi Dasrath Patel, who is the applicant of Cri. Misc. Appln. No. 2137 of 2010 as per Hindu customs and at present they are staying as wife and husband happily.

6 In this connection, reliance may be made to a decision of the Apex Court reported in (2000)10 SUPREME COURT CASES 10 in the case of Fazle Gaffar Khan and Ors. v. State of W.B. And another wherein proceedings arising out of complaint for the offence u/s 366 of IPC has been quashed. It has been held by the Apex Court in para 3 of the said judgment as under:

3. The Appellant faces criminal proceedings on a charge u/s 366 IPC on the allegation that he kidnapped a minor girl. On the basis of the first information report (FIR) the police took up the investigation and submitted a final form. A protest petition being filed by the complainant, the Magistrate treated it as a complaint and took cognizance. The accused moved the High Court u/s 482 Code of Criminal Procedure for quashing of the proceedings. The High Court having refused to quash the proceedings, the preset appeal has been filed in this Court. An affidavit of the girl has been filed clearly stating therein that she was married to the Appellant-accused. In view of such affidavit, the Court had issued notice pursuant to which the State entered appearance, but the complainant did not make any appearance. In the light of the said affidavit of the girl admitting the marriage between her and the present Appellant and the statement made by Ms. Indira Jaising, learned Senior Counsel appearing for the Appellant that a child has been born, we think it in the interest of justice to quash the criminal proceedings.

7. Applying the above ratio to the facts of the present case, as daughter of the complainant took place with Jimi Dasrath Patel, who is the applicant of Cri. Misc. Appln. No. 2137 of 2010 they are staying together as wife and husband under one roof, I am of the opinion that no useful purpose would be served by permitting the criminal proceedings pending against the applicants to continue as it would be an exercise in futility. Hence, the complaint in question is required to be quashed.

8. In view of the above, criminal complaint being C.R. No. I-64 of 2010 registered at Sarkhej Division Police Station and the proceedings there under are quashed. Both the Cri. Misc. Application No. 2137 of 2010 and Special Criminal Application No. 353 of 2010 are accordingly allowed. Rule is made absolute.

Direct service is permitted.

9. Office shall place a copy of this judgment in each matter.