

(2020) 01 GUJ CK 0045

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 199 Of 2020

Mohamad Sultan

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 07-01-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482

Indian Penal Code, 1860 — Section 363, 376, 376(2)(n), 376(3)

Protection Of Children From Sexual Offences (POCSO) Act, 2012 — Section 5(1), 6

Citation : (2020) 01 GUJ CK 0045

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

Bench : Single Bench

Advocate : Emik K Parmar, Pranav Trivedi

Final Decision : Allowed

Judgement

S.H.Vora, J

1. Learned advocate Mr.G.K. Chauhan states that he has instructions to appear for respondent No.2 - complainant and victim-Ms.Sajida Bano and seeks permission to file appearance. Permission is accordingly granted.
2. Learned advocate Mr.G.K. Chauhan confirms identity of Respondent No.2 and victim, who are present before the Court and admit genuineness and correctness of affidavits filed through learned advocate Mr.G.K. Chauhan, which are ordered to be taken on record.
3. Rule. Learned A.P.P. and learned advocate Mr.G.K. Chauhan waive service of Rule for respondent Nos.1 and 2 respectively. The learned A.P.P. objects quashment of the present proceedings on the premise of settlement.
4. With the consent of learned advocate for the applicant and learned advocate for respondent No.2 - original complainant and 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-186 2016 registered with Pandesara police station, Surat for the offence punishable under Sections 363, 376(2)(n) and 376(3) of the Indian Penal Code and Sections 4, 5(1) and 6 of the POCSO Act.

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

7. The applicant is facing aforementioned offences instituted by the complainant for the alleged incident suffered by complainant's daughter.

8. It is now stated at bar that the applicant, respondent No.2 and the victim have settled the dispute amicably and the respondent No.2 and victim have no grievance against the applicant. Not only that the victim and the applicant have married on 29.09.2016 as per the affidavit.

9. It is in light of this aspect, the applicant, respondent No.2 and the victim urged that impugned criminal proceedings being the FIR may be quashed.

10. Learned advocate Mr.Chauhan appearing for the contesting respondent No.2 and 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 complainant 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 respondent No.2 and the victim supported by duly affirmed affidavits placed on record through their 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 original complainant and victim through 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-186 2016 registered with Pandesara police station, Surat 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.