
(2013) 03 GUJ CK 0072
In the Gujarat High Court

Case No : Criminal Misc. Application No. 9513 of 2008

Richaben and 3 Ors.

APPELLANT

Vs

State of Gujarat and 2 Ors.

RESPONDENT

Date of Decision : 08-03-2013

Acts Referred:

Citation : (2013) 03 GUJ CK 0072

Hon'ble Judges : R.M. Chhaya, J

Bench : Single Bench

Judgement

R.M. Chhaya

1. By way of the present application u/s 482 of the Code of Criminal Procedure, 1973, the petitioners have prayed for quashing and setting aside F.I.R. being C.R. No. I-161 of 2008 registered at Bharuch City "A" Division Police Station, Bharuch by respondent No. 2 for the alleged offences under Sections 363, 366, 506(2) and 114 of the Indian Penal Code. It appears from the record that petitioner Nos. 2 and 3 are sons of petitioner No. 4 and respondent No. 3-first informant is father of petitioner No. 1, who has lodged impugned F.I.R. against the petitioner Nos. 2 to 4 on 09.07.2008.

2. It is alleged in the First Information Report that petitioner No. 1 is aged 17 years and 10 months. On 20.06.2008, at 7:00 A.M. petitioner No. 1 proceeded from village Bhalod to Bharuch to pay her college fees and elder brother of first informant namely Kaushikbhai also accompanied the petitioner No. 1 to Bharuch. It is alleged by the first informant that brother of first informant got down from the bus near Radhakrushna Society, Bharuch and petitioner No. 1 went to the S.T. Bus Depot of Bharuch but thereafter, she did not return back to home. Inquiries were made with the relatives, however, petitioner No. 1 was not found. Yadi was registered at Bharuch City "A" Division Police Station, Bharuch. It is further alleged that on inquiry from the friend of petitioner No. 1 namely Nirali, who resides at Village Bhalod, first informant came to know that petitioner No. 1 went with her brother-in-law viz. Rakeshkumar. Hence, the first informant

contacted Rakeshkumar, however, he did not give proper reply and on the contrary, got excited. It is further alleged that Rakeshkumar informed the first informant that if the first informant is ready to arrange marriage of petitioner No. 1 with his brother Bhaveshbhai Pancholi, then and then only they would send back petitioner No. 1.

3. In this set of factual background, it is further alleged that the first informant also met petitioner No. 4 herein at Bharuch on 26.06.2008 and petitioner No. 4 gave assurance and asked first informant that to give sometime. It is further alleged that first informant waited for 10 days, however, as nothing borne out, present F.I.R. came to be lodged by him. It is alleged by the first informant that all three accused with an intention to arrange" marriage of petitioner No. 1 with Bhaveshbhai Pancholi, who is brother of Rakeshkumar, induced and took her from lawful custody without her consent.

4. It is further pertinent to note that, it transpires from the record of the application that the first informant approached this Court by way of habeas corpus petition being Special Criminal Application No. 1582 of 2008, wherein the Division Bench of this Court comprising of Hon"ble Mr. Justice J.R. Vora and Hon"ble Mr. Justice J.C. Upadhyaya (as Their Lordships then were) passed the following order:--

Learned APP Mr. L.B. Dabhi, appearing for the respondent State in the mater and learned APP Mr. M.R. Mengde are present. Learned Advocate Mr. D.N. Pandya for the applicant is also present.

In pursuance of our Notice, corpus of Richaben is present on her own before this Court. We inquired whether she is aware of the facts of this application and she stated that she was neither confined, detained by respondents No. 3 to 5 nor abducted. She further stated that she has completed 18 years of age on 25th of August, 2008 and she has married to respondent No. 4-Bhavesh Bhikhabhai Pancholi and tenders a xerox copy of certificate of registration of marriage which is taken on record.

In view of above, when Richaben has attained the age of majority, as a free citizen of this country, is free to go anywhere she likes. Mr. K.G. Limbachiya, PSI of Bharuch City "A" Division Police Station is present.

The present order is passed in pursuance and in the scope of this petition preferred for writ of Habeas Corpus and shall not in any manner come in the way of any of the parties in any civil or criminal proceedings, which may be pending or filed by any of the parties.

With the above order, this petition is disposed of. Notice is discharged.

5. It may further be noted that this Court (Coram: Hon"ble Mr. Justice M.R. Shah) while admitting the present application vide order dated 17.09.2008 has observed thus:--

Rule. Mr. M.R. Mengdey, learned APP waives service of notice of Rule on behalf of respondents No. 1 and 2 and Mr. D.N. Pandya, learned Advocate waives service of notice of Rule on behalf of respondent No. 3.

On last adjournment, this Court called the parties in the Chamber to settle the dispute considering the statement of the girl before the Division Bench of this Court recorded in the order dated 01/09/2008 in Special Criminal Application No. 1582 of 2008 and considering the fact that the girl has married with the younger brother-in-law of her sister and the girl of the complainant has specifically and categorically mentioned that she has voluntarily gone with the younger brother-in-law of her sister and has married and is very happy at her matrimonial house.

Considering the above, interim-relief in terms of Paragraph 5 (B) is granted.

6. It may further be noted that petitioner No. 1 has filed an Affidavit dated 27.02.2013, wherein it is stated that she has married with petitioner No. 3 and has given birth to a female child aged two and half years old and she is living happily with her husband i.e. petitioner No. 3 herein.

7. Mr. Bharat S. Patel, learned counsel for the petitioners has contended that no offence as alleged in the impugned F.I.R. is culled out on bare reading of the impugned F.I.R. He further contended that as such the allegations made by the first informant that petitioner Nos. 2 and 3-original accused induced petitioner No. 1 and forcefully took away from the lawful guardianship of first informant is not correct, but petitioner No. 1 has voluntarily left her parental house and on attaining majority, has married with petitioner No. 3-Bhaveshbhai Bhikhabhai Pancholi under the Hindu rites. Reliance is also placed upon the Affidavit filed by petitioner No. 1 in the habeas corpus petition i.e. Special Criminal Application No. 9513 of 2008 and has submitted that even before the Division Bench of this Court, petitioner No. 1 has declared that on attaining her majority, she has married with petitioner No. 3 and that she was in love with petitioner No. 3, who is brother-in-law of her cousin.

8. He further points out that even the said fact was conveyed to the parents including first informant, however, they tried to get her married with someone else. He further submitted that because of such insistence of the parents of petitioner No. 1, herself informed her cousin to take her from Bharuch. Thereafter, on attaining majority, petitioner No. 1 has married Bhaveshbhai i.e. petitioner No. 3 and she is legally wedded wife of petitioner No. 3 and therefore, no offence as alleged is made out. Therefore, the allegations made in the impugned F.I.R. are far from the truth. It is contended that the present F.I.R. came to be registered only with a view to take vengeance, as the petitioner No. 1 voluntarily left her parental house on her own volition and has married to petitioner No. 3 after attaining majority. Mr. Bharat S. Patel, therefore contended that even if, the F.I.R. is taken at their face value, the same does not disclose any offence under Sections 363, 366, 506(2) and 114 of the Indian Penal Code. He therefore, submitted that the petition deserves to be allowed, as prayed for.

9. Per contra, Mr. D.N. Pandya, learned counsel for the first informant-respondent No. 3. has raised a singular contention to the effect that when the offence was committed, petitioner No. 1 was minor and therefore, impugned F.I.R. may not be quashed. It may be noted that no other submissions or contentions are raised by Mr. Pandya, learned counsel for the first informant-respondent No. 3.

10. Ms. Moxa Thakkar, learned Assistant Government Pleader for respondent Nos. 1 & 2-State has also raised a similar contention, as raised by Mr. Pandya, learned counsel for the first informant-respondent No. 3.

11. Considering the submissions made by learned counsel for the parties and taking into consideration all contents of the application as well as documents produced on record, it transpires that the birth date of petitioner No. 1 is 25.08.1990 and has voluntarily left her parental house.

12. As noted above, even before the Division Bench of this Court in the habeas corpus petition, detailed affidavit of petitioner No. 1 has been filed, which is also placed on record of this application. It clearly indicates that petitioner No. 1 voluntarily left her parental house at her own volition. It also further transpires that the Division Bench has recorded in the order dated 1.09.2008 that petitioner No. 1 has declared before the Court that she has completed 18 years of age on 25.08.2008 and she has married to Bhavesh Bhikhabhai Pancholi. Even the photocopy of Marriage Certificate of registration of marriage was produced on record by petitioner No. 1.

13. In light of the facts and circumstances of the case, it cannot be said that petitioner No. 1-daughter of first informant came to be removed from the lawful guardianship of her parents/guardians. Petitioner No. 1 has also declared before this court that petitioner Nos. 2, 3 and 4 were in no manner involved in her leaving her parental house and therefore, no offence as alleged in the First Information Report can be said to have been constituted.

14. It may further be noted that in fact, this application u/s 482 of the Code is preferred not only by the accused persons, but also by petitioner No. 1, who is alleged to be victim of the alleged offence. It is an admitted position that petitioner No. 1 after becoming major, married to petitioner No. 3 and lives happy marriage life with two and half years old daughter.

15. At this juncture, it would be appropriate to refer to the ratio laid down by the Apex Court in the case of Sangita Rani (Smt) alias Mehnazjahan v. State of Uttar Pradesh and another, : 1992 Suppl (1) SCC 715 has held as follows:--

That, in a situation where both the spouse are major, and there has been a valid marriage in accordance with law, and both of them are living together, the marriage should be sustained and nothing should be allowed to happen which would affect that position. The Supreme Court had, in the facts of the said case, cautioned the parents to accept the situation and create no problem for the petitioner and her husband. It was observed that, ordinarily, the Court does not

interfere at investigation stage in a criminal matter, but in the special facts indicated therein, it would be necessary to quash the pending investigation initiated by the father of the petitioner.

16. The Supreme Court in the case of Lata Singh Vs. State of U.P. and Another, has held as follows:--

17. The caste system is a curse on the nation and the sooner it is destroyed the better. In fact, it is dividing the nation at a time when we have to be united to face the challenges before the nation unitedly. Hence, inter-caste marriages are in fact in the national interest as they will result in destroying the caste system. However, disturbing news are coming from several parts of the country that young men and women who undergo inter-caste marriage, are threatened with violence, or violence is actually committed on them. In our opinion, such acts of violence or threats or harassment are wholly illegal and those who commit them must be severally punished. This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is that they can cut off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage. We, therefore, direct that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple are not harassed by any one nor subjected to threats or acts of violence, and any one who gives such treats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law.

17. Considering the facts and circumstances of the case and in light of the above cited judgments, it is admitted position that petitioner No. 1 on her attaining majority has married to petitioner No. 3-Bhaveshbhai Pancholi, which is a valid marriage. Petitioner No. 1 has declared before this Court that she lives happily with petitioner No. 3 since 2008 and petitioner Nos. 1 and 3 are the parents of one daughter aged two and half years old and they stay together.

18. In this circumstances, marriage should be sustained and nothing should be allowed to happen which would affect the position. Even otherwise in light of observations made above, even if the impugned F.I.R. is taken at its face value, no offence is culled out as alleged under Sections 363, 366, 506(2) and 114 of the Indian Penal Code. In the facts and circumstances, even to secure the ends of justice, impugned F.I.R. deserves to be quashed. For the foregoing reasons, the application is allowed and the impugned F.I.R. being CR. No. I-161 of 2008 registered with Bharuch City "A" Division Police Station, Bharuch is hereby quashed and set aside. Rule is made absolute. Interim relief granted earlier stands vacated.