

(2020) 01 GUJ CK 0182
In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 23289 Of 2019

Sunilbhai Bharatbhai Parnaliya

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 13-01-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 114, 363, 366, 376
Protection Of Children From Sexual Offences (POCSO) Act, 2012 — Section 4, 5(L), 6, 17, 18

Citation : (2020) 01 GUJ CK 0182

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

Bench : Single Bench

Advocate : Parimalsinh J Vaghela, Manan Mehta, Sweta A Dave

Final Decision : Allowed

Judgement

S.H.Vora, J

[1] Rule. Learned A.P.P. waives service of Rule for respondent No.1 and learned advocate Ms. Sweta Dave waives service of rule for respondent

No.3 - victim. Learned APP objects quashment of present proceedings on the premise of settlement.

[2] With the consent of learned advocate for the applicants and learned advocate for the victim, present application is taken up for final disposal today.

[3] By way of the present application under Section 482 of the Code of Criminal Procedure, 1973 (for short, the "Code"), the applicants pray for

quashing and setting aside the F.I.R. being C.R.No.I-17 of 2017 registered with Panshina Police Station, Surendranagar for the offences punishable

under Sections 363, 366, 376, 114 of the Indian Penal Code and under the provisions of sections 4, 5(L), 6, 17 and 18 of the POCSO Act.

[4] Learned advocate for the applicants has taken this Court through the factual matrix arising out of the present application. Vide order dated

16.12.2019, this Court passed following order:-

1. Learned advocate Ms. Sweta Dave states that she has instructions to appear for the victim " Ms.Sumitaben d/o. Rameshbhai Bagodariya, w/o. Sunilbhai Bharatbhai Parnaliya. She is permitted to file her Vakalatnama. She has produced affidavit of the victim, which is ordered to be taken on record.

2. The victim is present before the Court and admits correctness and genuineness of the affidavit filed by her through her learned advocate. Learned advocate Ms.Sweta Dave identifies the victim and confirms correctness and genuineness of the affidavit filed by her.

3. Notice returnable on 23.12.2019. Learned APP waives service of notice on behalf of the respondent " State. Learned APP is directed to take instructions on the next date of hearing."

Further, on 23.12.2019, this Court passed following order:-

Learned advocate Mr. LM Zala for the applicants states at bar that the applicants shall produce certificate of marriage registration on the next date of hearing. Stand over to 26.12.2019."

In pursuance of aforesaid order, till date, the applicants have filed marriage registration certificate. Though, private respondent " original complainant is served, he chose not to appear.

[5] It is now stated at bar that the applicants and the victim have settled the dispute amicably and the victim has no grievance against the applicants.

Not only that the victim and the applicant No.1 have married on 24.12.2019 as per certificate of marriage, which is ordered to be taken on record.

[6] It is in light of this aspect, the applicants and the victim urged that impugned FIR may be quashed.

[7] Learned advocate appearing for the the victim points out that since the victim has already married with the applicant No.1, 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.

[8] 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 No.1 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.

[9] In view of the aforementioned aspect, more particularly, in light of the affidavit filed by the victim, 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.

[10] 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, who confirms the correctness and genuineness of the affidavit, which is ordered to be taken on record, 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.

[11] In view of this position, this application is allowed.

Impugned F.I.R. being C.R.No.I-17 of 2017 registered with Panshina Police Station, Surendranagar and all other proceedings taken out in pursuance

thereof against the present applicants are hereby quashed and set aside. The applicants 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.