
(2013) 12 GUJ CK 0204

In the Gujarat High Court

Case No : Criminal Miscellaneous Application (For Quashing and Set Aside FIR/ Order) No. 6413 of 2012

Vijay Naranbhai Vajaji Kharade

APPELLANT

Vs

State of Gujarat and 1 Another

RESPONDENT

Date of Decision : 23-12-2013

Acts Referred:

Citation : (2013) 12 GUJ CK 0204

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

Bench : Single Bench

Advocate : Dipal R. Ravaiya, for the Appellant; Alkesh N. Shah, Additional Public Prosecutor for the Respondent(s) No. 1, HCLS Committee, Advocate for the Respondent(s) No. 2 and Ms. Renu D. Chaudhary, Advocate for the Respondent(s) No. 2, for the Respondent

Final Decision : Allowed

Judgement

R.M. Chhaya, J.—By way of this application u/s 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code"), the applicant has prayed for quashing and setting aside the First Information Report registered as CR No. I-10 of 2012 with Vijaynagar Police Station, District Sabarkantha for the offence punishable under Sections 363 and 366 of the IPC. It appears from the impugned FIR that respondent No. 2 - first informant lodged the FIR on the main allegation that the date of birth of his daughter is 11.4.1994. It is alleged that on 17.1.2012, the daughter of the respondent No. 2 - first informant left the house by informing that she intends to go to Vijaynagar College. As she did not return, efforts were made to find her whereabouts and ultimately, on 24.1.2012, an intimation was given to Vijaynagar Police Station informing the police authorities that the daughter of the first informant - respondent No. 2 is lost and not available and such an entry came to be registered on the register of the police as Information Entry No. 2 of 2012. It is further alleged that further attempts were made even in the State of Rajasthan, but as the daughter of the first informant was not found, the present FIR came to be lodged on 12.3.2012. It is alleged

that the daughter of the first informant has illicit relations with the present applicant and it is alleged that the applicant induced the daughter of the first informant - Sonalben with an ill-motive to marry her and thereby, abducted the daughter of the first informant. On these factual background, the FIR came to be lodged.

2. Heard Mr. D.R. Ravaiya, learned advocate for the applicant, Mr. Alkesh N. Shah, learned Additional Public Prosecutor for respondent No. 1 - State Government and Ms. Renu Chaudhary, learned advocate for respondent No. 2 - first informant.

3. Mr. D.R. Ravaiya, learned advocate for the applicant submitted that even if the FIR is taken at its face value, prima facie, no offence is culled out for the offence punishable under Sections 363 and 366 of the IPC. It is submitted that the birth date of the daughter of the first informant is 11.4.1994 and has also tendered a photo-copy of the leaving certificate of the daughter of the first informant - Sonalben. It is submitted that after attaining majority, the daughter - Sonalben has married the applicant under Hindu rites and rituals and has also relied upon the certificate of marriage at Annexure-B (Page 18 of the paper book). It is submitted that daughter of the first informant has voluntarily and willingly left her parental house i.e. house of respondent No. 2 and has married with the applicant.

4. It is submitted that in fact the first informant had also preferred an application under Article 226 of the Constitution of India for a writ of Habeas Corpus being Special Criminal Application No. 1079 of 2012 and the daughter of the first informant had expressed her wish and will to stay with the present applicant and had informed the Division Bench of this Court that she has voluntarily left the parental home and has married the applicant. It is submitted that as on date, the applicant and the daughter of the first informant are staying as husband and wife at Kherwada, Rajasthan and lead a happy married life. It is, therefore, submitted that any further continuance of the proceedings pursuant to impugned FIR would amount to abuse of process of law and Court and would disturb the happy married life of the applicant and the daughter of the first informant. It is, therefore, submitted that in order to secure the ends of justice, this is a fit case, wherein this Hon'ble Court would be pleased to exercise its inherent powers conferred u/s 482 of the Code and quash the complaint as prayed for.

5. Per contra, Mr. Alkesh N. Shah, learned Additional Public Prosecutor for respondent No. 1-State Government and Ms. Renu Chaudhary, learned advocate for respondent No. 2 were not in a position to controvert the fact that the daughter of the first informant, after attaining majority, has married the present applicant and at present, they are staying as husband and wife. The learned advocates appearing for the respondents have not been able to point out anything contrary than what was considered by the Division Bench of this Court (Coram: A.L. Dave, as he then was and N.V. Anjaria, J.) in Special Criminal Application No. 1079 of 2012.

6. No other or further submissions are made by the learned advocates appearing for the parties.

7. It may be noted that in the Habeas Corpus petition which was filed by the first informant, the Division Bench of this Court, while disposing of the petition vide order dated 4.5.2012, observed as under:--

Respondent No. 4-Vijaykumar Naranbhai Vajaji Kharadi is present before us. He is represented by learned advocate Mr. Dipal Ravaiya. The corpus is also produced before us. We have talked to corpus. She states that she was neither kidnapped nor abducted against her Will. She has married respondent No. 4 upon her volition and was staying at Khervala at Rajasthan with her husband and she wants to stay with her husband and does not want to go and stay with her father. Indisputably, corpus Sonal is a major.

2. In light of the above developments, petition cannot be entertained and stands dismissed. Notice discharged.

8. Considering the aforesaid observations made by Division Bench of this Court, which record that indisputably the daughter of the first informant is a major and has expressed her willingness to stay with the applicant as her wife and also considering the fact that before the Division Bench, the daughter of the respondent No. 2 - first informant has stated that she was neither kidnapped nor abducted, fortifies the contentions raised by the learned advocate for the applicant. In view of the fact that the applicant and the daughter of the first informant have already married and both being major, the impugned FIR is an after thought and the same is false, frivolous and vexatious.

9. At this juncture, it may be appropriate to refer to the judgment of the Hon''ble Apex Court in the case of Lata Singh Vs. State of U.P. and Another, wherein it has been held as under:--

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.

10. It is also appropriate to refer to the case of the Hon''ble Apex Court in the case of Sangita Rani (Smt) alias Mehnazjahan v. State of Uttar Pradesh & Anr., reported in : 1992 Supp (1) SCC 715, wherein it has been observed thus:--

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.

11. Considering the aforesaid facts and circumstances, on perusal of the record of the application, having considered the submissions made by the learned advocates appearing for the respective parties as well as considering the ratio laid down by the Hon''ble Apex Court in the above-referred decisions, it appears that any further continuance of the criminal proceedings against the applicant would be unnecessarily harassment to the applicant and the same would work detrimental to the happy married life and therefore, it is eminent that the valid marriage between the applicant and the daughter of the first informant, who are major and living together, should be sustained. It also appears that any further continuance of the proceedings pursuant to the impugned FIR would amount to abuse of process of law and Court and hence, in order to secure the ends of justice, the impugned FIR is required to be quashed and set aside in exercise of inherent powers of this Court conferred u/s 482 of the Code. Resultantly, therefore, the application is allowed. The FIR bearing CR No. I-10 of 2012 with Vijaynagar Police Station, District Sabarkantha and all other consequential proceedings arising out of the aforesaid FIR are hereby quashed and set aside. Rule is made absolute.