

(2014) 12 GUJ CK 0039

In the Gujarat High Court

Case No : Criminal Misc. Application (For Quashing and Set Aside FIR/Order) No. 13658 of 2014

Yusuf Ibrahim Mohammed Lokhat

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 02-12-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Penal Code, 1860 (IPC) — Section 361

Prohibition of Child Marriage Act, 2006 — Section 10, 11, 9

Citation : (2014) 12 GUJ CK 0039

Hon'ble Judges : J.B. Pardiwala, J

Bench : Single Bench

Advocate : Nasir Saiyed, Advocate for the Appellant; A.N. Shah, APP, Advocate for the Respondent

Judgement

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J.B. Pardiwala, J.—Rule returnable forthwith. Mr. Shah, the learned APP waives service of notice of rule for and on behalf of the respondent No. 1-State of Gujarat. The respondent No. 2- original informant although served with the notice issued by this Court, has chosen not to appear either in person or through an advocate.

2. By this application, the petitioners- original accused seek to invoke the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, 1973 praying for quashing of the F.I.R. being C.R. No. II-247 of 2014 filed before the Kamrej Police Station, Surat (Rural) for the offence punishable under Sections- 9, 10, 11 of the Prohibition of Child Marriage Act, 2006, which upon filing of the chargesheet, has culminated in Criminal Case No. 1642 of 2014 pending in the Court of the learned J.M.F.C., Kathor, District: Surat.

3. It appears that an FIR was lodged by the respondent No. 2 in her capacity as a Superintendent of the "Children Home for Girls" situated at Ramnagar, Rander,

Surat. In the FIR, it has been stated that the Home received a letter on 16.06.2014 from one Shri Dawood Mohammed Asmaal, resident of Vhoraji Faliyu, Post-Kathor, Taluka-Kamrej, District- Surat informing that his daughter viz. Almaas Dawood Asmaal born on 09.04.1997 and aged 17 years & 03 months at that point of time, has got married with the petitioner No. 1 herein aged 21 years. In the FIR, it is further stated that the father of the girl had informed that his daughter could not have performed Nikaah with the petitioner No. 1 as she was a minor. The respondent No. 2 on receipt of such a letter thought fit to file the FIR. The FIR has been lodged against the accused persons of the offence punishable under Sections- 9, 10, 11 of the Prohibition of Child Marriage Act, 2006.

4. The petitioner No. 1 before me is the husband of the girl, the petitioners Nos. 2, 3, 4 and 5 are the persons residing in the locality, who are noway concerned in any manner with the marriage of the petitioner No. 1 with the girl.

5. It is not in dispute that the boy and girl both are muslims. According to the personal Law of Muslims, the girl no sooner she attains the puberty or completes the 15 years, whichever is earlier, is competent to get married without the consent of her parents. This is not a case where there are any allegation of enticing or taking away so as to constitute the punishment under kidnapping from lawful guardianship under Section 361 of the IPC. It appears that the parents of the girl have also now accepted the marriage. The petitioner No. 1 and his wife viz. Almaas both are personally present in the Court. They confirm about their marriage. Almaas submits that she is happily residing with her husband at her matrimonial home.

6. Having regard to the peculiar facts of the case, in my view, no case is made out to prosecute the criminal proceedings further.

7. In the result, this application is allowed. The further proceedings of Criminal Case No. 1642 of 2014 pending in the Court of the learned J.M.F.C., Kathor, District: Surat arising from the C.R. No. II-247 of 2014 filed before the Kamrej Police Station, Surat Rural are hereby ordered to be quashed. Consequently, all further proceedings pursuant to such FIR shall stand terminated.

Rule is made absolute. Direct service is permitted.