

Hariyabhai @ Haribhai Ramabhai ... vs State Of Gujarat on 25 September, 2019

Author: S.H.Vora

Bench: S.H.Vora

R/CR.MA/17592/2019

ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 17592 of 2019

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HARIYABHAI @ HARIBHAI RAMABHAI GHANGHAR(GANGAR)

Versus

STATE OF GUJARAT

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Appearance:

MR PREMAL S RACHH(3297) for the Applicant(s) No. 1

for the Respondent(s) No. 2

MR LB DABHI APP (2) for the Respondent(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE S.H.VORA

Date : 25/09/2019

ORAL ORDER

1. Learned advocate Mr.Premal Rachh for the applicant confirms identity of victim girl, who is present before the Court and admits genuineness and correctness of affidavit filed through learned advocate Mr.Rachh, which is annexed at Annexure-D to the application.

2. Rule. Learned A.P.P. waives service of Rule for respondent - State. The learned A.P.P. objects quashment of the present proceedings on the premise of settlement.

3. With the consent of learned advocate for the applicant, present application is taken up for final disposal today.

4. 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-120 of 2016 registered with Dwarka Police Station, Devbhoomi Dwarka for the offences punishable under R/CR.MA/17592/2019 ORDER Sections 363, 366 and 376 of the Indian Penal Code and under the provisions of section 4, 5(L), 6 and 12 of the POCSO Act.

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

6. It is now stated at bar that the applicant and the victim have settled the dispute amicably and the victim has no grievance against the applicant. Not only that the victim and the applicant have married on 06.08.2018 as per marriage registration certificate annexed at Annexure-B to the application and out of said wedlock, they have delivered a baby boy on 13.11.2017 as per birth certificate wherein, the applicant and the victim are shown as parents of the child as per birth certificate issued by the competent authority. Learned advocates for the parties have placed on record photocopy of birth certificate issued on 31.07.2018, which is ordered to be taken on record. Thus, they have boy aged about two years out of their wedlock.

7. It is in light of this aspect, the applicant and the victim urged that impugned FIR may be quashed.

8. Learned advocate Mr.Rachh 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 as well as her child, who is hardly aged about two years old.

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9. 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 and out of said wedlock, they have a child aged about two years. 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 victim insists for quashment of impugned criminal proceedings.

10. In view of the aforementioned aspect, more particularly, in light of the affidavit filed by the victim, which is ordered to be taken on record, through learned advocate Mr.Rachh, 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 R/CR.MA/17592/2019 ORDER the resolution of disputes that again be irrecoverably lost.

11. 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 learned advocate, who confirms the correctness and genuineness of the affidavit, 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.

12. In view of this position, this application is allowed. Impugned F.I.R. being C.R.No.I-120 of 2016 registered with Dwarka Police Station, Devbhoomi Dwarka as well as Special Pocso Case No.17 of 2018 pending before the Special Pocso Court, Devbhoomi Dwarka at Khambhaliya 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.

(S.H.VORA, J) Hitesh