ABC 2019 (III) 374 GUJ
ACQUITTAL & BAIL CASES

HIGH COURT OF GUJARAT

(S.H.Vora, J.)

R/Criminal Misc Application No 21065 of 2018

Decided on 20 September 2019

AJAY RAMAGIYA GUPTA ***- Applicant(s).***

Versus

STATE OF GUJARAT & ORS. ***- Respondent(s).***

Law Covered:- ***Code of Criminal Procedure, 1973 — Section 482 — Indian Penal Code, 1860 — Sections 363, 366 & 376 — Protection Of Children From Sexual Offences (POCSO) Act, 2012 — Sections 3, 4 & 5(l) — Quashing of FIR in case of non-compoundable offences on the basis of compromise — marriage between victim & accused — marriage certificate produced — one daughter out of wedlock — victim was about 18 yrs. at the time of offence — Held, this Court cannot overlook the fact that the applicant & the victim girl got married — Such situation is an exception to the approach u/s 482 on the basis of settlement — for the pre-dominant purpose of the welfare of the victim to ensure her better future life— FIR quashed. (Para 12)***

Held:- This Court cannot overlook the fact that the applicant 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. (Para-12)

Counsel:- ***For Applicant(s):*** *Nishith P Thakkar, Adv.*

For Respondent(s): *Pranav Trivedi, Adv.*

Cases Referred:-

1. *Anita Maria Dias Vs. State of Maharashtra, (2018) 3 SCC 290, (Para-13)*
2. *Shimbu Vs. State of Haryana, (2014) 13 SCC 318, (Para-13)*
3. *Parbatbhai Ahir Vs. State of Gujarat, (2017) 9 SCC 641, (Para-13)*

ORDER

a ***S.H.VORA, J.: -*** 1. On 20.12.2018, this Court passed following order:-

"Learned advocate Ms. Asha Tiwari is permitted to file her appearance on behalf of the Original-complainant.

b The engagement ceremony is over, the photographs have also been produced, which is ordered to be taken on record. The affidavit of the both the sides are brought on record. Family members of the applicant and the victim girl are present before this Court. They are desirous to get them

c married.

According to the learned advocate Mr.Thakkar, boy is below 21 years of age, after 5 months, he will become major.

d Considering the above facts and circumstances of the case, temporary bail shall granted earlier vide order dated 30.11.2018 is hereby extended for a further period of 6 months, on the same terms and conditions.

Let the matter appear on 12th June 2019.

e Let there shall be no further proceedings in CR. No.I-129 of 2018 registered at Amraiwadi Police Station, Ahmedabad. Charge-sheet if not filed in CR. No.I-129 of 2018 registered at Amraiwadi Police Station, let the same be not done without permission of this Court.

f Registry shall also send copy of this order as well as all details in this regard to the jail authority.

Direct service is permitted."

2. Pursuant to the aforesaid order, learned advocate Ms. Asha

g Tiwari, appears for respondent No.2 complainant along with the victim. She is also permitted to file her appearance on behalf of the victim.

3. Learned advocate Ms. Asha Tiwari confirms identity of respondent No.2 original complainant and the victim, who are

h present in the Court and admit correctness and genuineness of the affidavit filed by them through learned advocate Ms. Asha Tiwari, which are produced before this Court and the same are ordered to be taken on record.

4. Rule. Learned A.P.P. and learned advocate Ms. Asha Tiwari waive service of Rule for respondent Nos.1 and 2 respectively.

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5. With the consent of learned advocate for the applicant and learned advocate for respondent No.2 original complainant and the victim, present application is taken up for final disposal today. The parties are present before the Court alongwith their respective learned advocates.

6. 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-129 of 2018 registered with Amraiwadi Police Station for the offence punishable under Sections 363, 366, 376 of the Indian Penal Code and under the provisions of sections 3, 4, 5(L) the POCSO Act.

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

8. The birth date of victim girl Ms. Ankitaben is 16.12.2000 as per the certificate dated 7.5.2019, which is ordered to be taken on record, and the marriage of the applicant and the victim girl was solemnized on 7.5.2019 as per marriage registration certificate dated 8.5.2019, which is ordered to be taken on record. Meaning thereby, on the date of offence, the victim was aged about 18 years.

9. It is now stated at bar that the applicant, respondent No.2 and the victim have settled the dispute amicably and the victim has no grievance against the applicant.

10. It is in light of this aspect, the applicant, respondent No.2 and the victim urged that impugned FIR may be quashed.

11. Learned advocate Ms. Asha Tiwari appearing for the contesting respondent No.2 and the victim 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 jeopardize and there is no one to take care of her.

12. This Court cannot overlook the fact that the applicant 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.

13. 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 one daughter. 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.

14. In view of the aforementioned aspect, more particularly, in light of the statements made by respondent No.2 and the victim supported by duly affirmed affidavit placed on record through their learned advocate Ms. Asha Tiwari, 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.

15. 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 original complainant through his learned advocate, 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.

16. In view of this position, this application is allowed. Impugned F.I.R. being C.R.No.I-129 of 2018 registered with Amraiwadi Police Station and all other proceedings taken out in pursuance thereof against the present applicant is 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.

17. Since the applicant is in jail, he shall be released from the jail immediately, if not required in any other offence.

Result:- Application allowed.