

Criminal Misc. Application (For Quashing & Set Aside Fir/Order) No. 26957 of 2017

Nimeshbhai Bharatbhai Desai v. State of Gujarat

2017 SCC OnLine Guj 1386

In the High Court of Gujarat at Ahmedabad
(BEFORE J.B. PARDIWALA, J.)

Nimeshbhai Bharatbhai Desai Applicant(s)

v.

State of Gujarat & 1 Respondent(s)

Criminal Misc. Application (For Quashing & Set Aside Fir/Order) No. 26957 of 2017

Decided on November 6, 2017

Appearance:

Mr. Jigar G Gadhavi, Advocate for the Applicant(s) No. 1

Mr. Devnani, Addl. Public Prosecutor for the RESPONDENT(s) No. 1

ORAL ORDER

J.B. PARDIWALA, J.:— This Court is called upon to decide a question of utmost public importance, whether a wife can initiate prosecution against her husband for unnatural sex punishable under section 377 of the Penal Code, 1860?. If the husband forces his wife to indulge in oral sex, whether the same would constitute an offence under section 377 of the IPC?. If the husband compels his wife to indulge in oral sex, whether the same would constitute an offence of cruelty within the meaning of section 498-A of the IPC. This Court would also like to examine the question whether forcing a wife by the husband to indulge in oral sex would amount to rape punishable under section 376 of the IPC.

2. Marital rape is in existence in India, a disgraceful offence that has scarred the trust and confidence in the institution of marriage. A large population of women has faced the brunt of the non-criminalization of the practice.

3. Marital rape refers to “unwanted intercourse by a man with his wife obtained by force, threat of force, or physical violence, or when she is unable to give consent.” It is a nonconsensual act of violent perversion by a husband against the wife where she is abused physically and sexually.

4. The following three kinds of marital rape, generally prevalent in the society;

* Battering rape: In this type of marital rape, women experience both physical and sexual violence in the relationship and in many ways. Some instances are those where the wife is battered during the sexual violence, or the rape may follow a physical violent episode where the husband wants to make up and coerces his wife to have sex against her will. In most cases, the victims fall under this stated category.

* Force only rape: In this type of marital rape, husbands use only that amount of force, as it is necessary to coerce their wives. In such cases, battering may not be a characteristic and women who refuse sexual intercourse usually face such assaults.

* Obsessive rape: In obsessive rape, assaults involve brutal torture and/or perverse sexual acts and are most commonly violent in form. This type has also been labeled as sadistic rape.

5. Mr. Gadhvi, the learned counsel appearing for the applicant and Mr. Devnani, the learned APP appearing for the State are requested to assist the Court.

6. Let notice be issued to the respondents, returnable on 23.11.2017. Mr. Devnani, the learned APP, waives service of notice for and on behalf of the respondent No. 1. The respondent No. 2 be served directly through the Investigating Officer of the concerned police station.

7. Let the matter appear on top of th board.

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