

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION NO. 11267 of 2020****FOR APPROVAL AND SIGNATURE:****HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

MITESH ASHOKBHAI CHUNAVALA

Versus

STATE OF GUJARAT

Appearance:

JIGNESHKUMAR P PANDAV(8297) for the Applicant(s) No. 1

KARTIKKUMAR K JOSHI(8042) for the Respondent(s) No. 1

MS.MOXA THAKKAR, APP (2) for the Respondent(s) No. 1

CORAM: HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI

Date : 04/09/2020

ORAL JUDGMENT

1. The Applicant has filed this Application under Section 482 of the Code of Criminal Procedure, 1973 for quashing of the FIR being I-CR No. I-11196009200392 of 2020 registered with Jawaharnagar Police Station, Dist. Vadodara City for the offences punishable under Sections 363, 366 and 376(2)(n) of the Indian Penal Code and under Sections 4, 5, (1) and 6(1) of POCSO Act, 2012 with all further and consequential proceedings.

2. Heard learned Advocate Mr. Jigneshkumar P.Pandav for the applicant, Mr. Kartikkumar K. Joshi, learned advocate for the original complainant and learned APP for the respondent State through video conference.

3. Learned advocate for the applicant has drawn the attention of this Court on the marriage certificate and affidavit of the victim girl and submitted that both have married. He further submitted that the applicant Accused has no antecedents and therefore, the discretion may be exercised for quashing of FIR and the consequential proceedings arising therefrom.

3.1. Learned advocate Mr. Jigneshkumar Pandav for the applicant has placed reliance upon four different authorities of Hon'ble Supreme Court and this Court, viz. (i) The Hon'ble Supreme Court in case of **Narender Singh & Others vs. State of Punjab and Another** reported in (2014) 6 SCC 466, (ii) **Iqbal Dawood Hala Vs. State of Gujarat**, reported in 2013 (0) AIJEL-HC 229756, (iii) a judgment in case of **Janki Chintan Shah Vs. State of Gujarat**, reported in 2014 (0) AIJEL-HC 231973 and (iv) **Arun Singh And Others vs. State of Uttar Pradesh Through Its Secretary And Another**, reported in (2020) 3 Supreme Court Cases 736.

4. Learned advocate for the respondent no. 2 has placed on record Affidavit on behalf of the Respondent No. 2 – Rekhaben Ashokbhai Ranchhodbhai Panpatil dated 18.07.2020 as well as Marriage Certificate. The same read thus:

Affidavit on behalf of respondent No.2 original complainant

"I respondent No.2 Rekhaben Ashokbhai Ranchhodbhai Panpatil, aged 45 years residing at Room No.15, Block -01, VUDA Housing, Nr. Water Tank, Vaghodiya Road,

Vadodara, Dist.: vadodara file the following affidavit and state on solemn affirmation on oath as under:

1. *I am respondent No.2 in the present petition and I am original complainant in the impugned FIR and that I am well conversant with the facts of the case and I have gone thorough the present petition, I am competent to file the present afficavit.*

2. *That I had filed an FIR being C.R. No.I-11196009200392/2020 at Jawahanajharnagar Police Station, Vadodara City for the offences punishable under Section 363, 366, and 376(2)(n) of the Indian Penal Code and under sections 4, 5(1) and 6(1) of the POCSO Act, against the applicant herein.*

3. *That in the present case, after lodgment of the FIR, full and final settlement / compromise has been arrived at between the petitioners, and the complainant herein respondent No.2 – Rekhaben Ashokbhai Ranchhodbhai Panpatil.*

4. *In the present case, the impugned FIR was lodged in hot haste. However, with intervention of relatives and common friends full and final amicable settlement has taken place between the complainant and the accused and victim girl and accused got married dated 07.07.2020.*

5. *That therefore the deponent herein i.e. respondent No.2 – original complainant does not intend to prosecute with the case any further and she intends to state that she has no objection if the impugned FIR be quashed and set aside in the interest of justice.*

6. *That the contents of the petition have been read over and explained to me in detailed and I say that the contents of the petition are absolutely true and is supported the same.*

8. *I, therefore, pray that if the impugned C.R. No.I-11196009200392/2020 at Jawahanajharnagar Police Station, Vadodara City for the offences punishable under Section 363, 366, and 376(2)(n) of the Indian Penal Code and under sections 4, 5(1) and 6(1) of the POCSO Act, 2012 is quashed and set aside, then the respondent No.2 has no objection. That she gives a free consent to quashment of the aforesaid FIR and she has no objection if the prayer made in the present petition may be granted by this Hon'ble Court."*

*“GOVERNMENT OF GUJARAT
Certificate of Registration of Marriage
(Under the Gujarat Registration of Marriages Act, 2006)*

Registration No. 161MR20200000255

This is to certify that Shri Miteshkumar Ashokkumar Chunawala son of Shri Ashokbhai Dinubhai Chunawala residing at 976 Vaikunth Society, Bapod Jakatnaka Waghodiya Road, Vadodara, , Gujarat, India and Sanjana Ashokbhai Panpatil daughter of Shri Ashokbhai Ranchhodbhai Panpatil residing at 502, Jalaram Society, Karodiya, Vadodara, Vadodara, Gujarat India have furnished the particulars in Memorandum declaring that their marriage has been solemnized on 7.7.2020 at Meldi Mata Mandir B/h. Zarola Wadi Dabhoi Dist. Vadodara and that the same has been registered this day 10th of July 2020 at Serial No. 0000255 of volume 0000001 of Register of Marriages maintained under the “Gujarat Registration of Marriages Act, 2006 (Guj. 16 of 2006)”.

Registrar of Marriages

Dabhoi Nagarpalika”

5. Learned Advocate for the applicant and learned advocate for the original complainant have submitted that the parties have entered into an amicable settlement by way of affidavit which is produced on record. Therefore, they have submitted that the Application may be allowed and the FIR may be quashed.

6. Per contra, learned APP has opposed the quashing petition and submitted that this Court may not exercise discretion for quashing the FIR.

7. This Court has considered the arguments advanced by the learned Advocates appearing for the respective parties and also referred the authorities submitted by the learned advocate for the applicant.

8. The Hon'ble Supreme Court (i) in case of **Narender Singh & Others vs. State of Punjab and Another** reported in (2014) 6 SCC 466 has observed as under:

“8. We find that there are cases where the power of the High Court under Section 482 of the Code to quash the proceedings in those offences which are uncompoundable has been recognized. The only difference is that under Section 320(1) of the Code, no permission is required from the Court in those cases which are compoundable though the Court has discretionary powers to refuse to compound the offence. However, compounding under section 320(1) of the Code is permissible only in minor offences or in non-serious offences. Likewise, when the parties reach settlement in respect of the offences enumerated in section 320(2) of the Code, compounding is permissible but it requires the approval of the Court. Insofar as serious offences are concerned, quashing of criminal proceedings upon compromise is within the discretionary powers of the High Court. In such cases, the power is exercised under Section 482 of the Code and proceedings are quashed. Contours of these powers were described by this Court in B.S. Joshi vs. State of Haryana which has been followed and further explained/elaborated in so many cases thereafter, which are taken note of in the discussion that follows hereinafter.”

12. Thereafter, the Court summed up the legal position in the following words:

“61. The position that emerges from the above discussion can be summarized thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plentitude with no statutory limitation but it has to be exercised in accord with the guidelines engrafted in such power viz.: (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of

such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act, or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominately civil flavor stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

The Court in Gian Singh case was categorical that in respect of serious offences or other offences of mental depravity or offence of merely decoity under special statute, like the prevention of Corruption Act or the offences committed by public servant while working in that capacity. The mere settlement between the parties would not be a

ground to quash the proceedings by the High Court and inasmuch as settlement of such heinous crime cannot have imprimatur of the Court.”

(ii) The Coordinate Bench (Coram: K.M. Thaker, J.) in a judgment in case of **Iqbal Dawood Hala Vs. State of Gujarat**, reported in 2013 (0) AIJEL-HC 229756, held as under:

“Code of Criminal Procedure, 1973-S.482-Indian Penal Code, 1860-S.504, 143, 147, 148, 149, 326 – Arms Act, 1959 – S.25(1) (c)- Bombay Police Act, 1951-S.135(1)-quashing of the criminal complaint- dispute between the parties is of private and personal nature – complainant has admitted that the complainant and original accused i.e. the applicants have voluntarily settled the dispute – complainant – respondent No.2 has also admitted that he does not want to prosecute the complaint further qua the applicants – held no fruitful purpose will not be served in continuing the prosecution of the complaint – fit case for exercising powers u/s. 482 of the Code to prevent abuse of the process of Court – criminal complaint quashed – application allowed.”

(iii) The Coordinate Bench (Coram: R.M. Chhaya, J.) in a judgment in case of **Janki Chintan Shah Vs. State of Gujarat**, reported in 2014 (0) AIJEL-HC 231973, held as under:

“Code of Criminal Procedure, 1973 – S. 482 – Indian Penal Code, 1860 – S. 120B, 307, 326 – Arms Act, 1959 – 25(1)(b), 25(1)(a) – quashing of complaint – applicant was not named as an accused in the complaint but was shown as witness – however later on investigating officer joined him as an accused – compromise and settlement between the parties – both the sides present before the Court – complainant filed an affidavit in support of the applicant/accused and confirmed about the settlement – denial of allegation by the complainant against the applicant – no objection to the complainant if complaint is quashed qua applicant only – case of narinder Singh (Supra) referred and relied upon – fit case to exercise jurisdiction u/s 482 of the Code – complaint qua applicant quashed – application allowed.”

(iv) The Hon’ble Supreme Court in case of **Arun Singh And Others vs. State of Uttar Pradesh Through Its Secretary And Another**, reported in **(2020) 3 Supreme Court Cases 736**, has partly allowed the Criminal Appeal

wherein quashing petition was allowed under Section 482 of the Cr.P.C. and it was held that when there is abuse of process of law the FIR is required to be quashed.

(v) The Coordinate Bench (Coram: Sonia Gokani,J) in a judgment in case of **Kalubhai Virabhai Thakor (Mauluna) v. State of Gujarat**, 2019 (0) AIJEL-HC 240101 (Criminal Miscellaneous Application No. 1399 of 2019) has observed as under:

“27.At this juncture, we would like also to add that the timing of settlement would also play a crucial role. If the settlement is arrived at immediately after the alleged commission of offence when the matter is still under investigation, the High Court may be somewhat liberal in accepting the settlement and quashing the proceedings/investigation. Of course, it would be after looking into the attendant circumstances as narrated in the previous para. Likewise, when challan is submitted but the charge has not been framed, the High Court may exercise its discretionary jurisdiction. However, at this stage, as mentioned above, since the report of the I.O. under Section 173,Cr.P.C. is also placed before the Court it would become the bounding duty of the Court to go into the said report and the evidence collected, particularly the medical evidence relating to injury etc. Sustained by the victim. This aspect, however, would be examined along with another important consideration, namely, in view of settlement between the parties, whether it would be unfair or contrary to interest of justice to continue with the criminal proceedings and whether possibility of conviction is remote and bleak. If the Court finds the answer to this question in affirmative, then also such a case would be a fit case for the High Court to give its stamp of approval to the compromise arrived at between the parties, inasmuch as in such cases no useful purpose would be served in carrying out the criminal proceedings which in all likelihood would end in acquittal, in any case.”

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9. Upon all such authorities, which have been submitted by the learned advocate for the applicants, authorities nos. (i) in case of Narender Singh & Others vs. State of Punjab and Another (ii) Iqbal Dawood Hala Vs. State of Gujarat and (iii) Janki Chintan Shah Vs. State of Gujarat are fully applicable to the present case. In addition to that this Court has also referred to the latest order passed by the co-ordinate Bench (Coram: Sonia Gokani,J) in case of **Kalubhai Virabhai Thakor**

(Mauluna) v. State of Gujarat, 2019 (0) AIJEL-HC 240101 and therefore this Court is of the view that when the parties have amicably settled the disputes in such offences, there is no requirement of trial and same would be against the ends of justice. Therefore, FIR is required to be quashed under section 482 of the Cr.P.C.

10. Having heard the arguments advanced by the learned Advocates appearing for the respective parties. Further, there is amicable settlement arrived at between the complainant and the accused person by way of an affidavit and also the applicant and the victim have been entered into marriage life, it would be futile exercise if the trial shall take place and the purpose of the judicial process would not be served and therefore in humble view of this Court, it would be just and proper to quash the aforesaid FIR.

11. In view of the aforesaid facts and circumstances and the further development that took place in the matter as come forward by way of an Affidavit of respondent no.2 as well as marriage certificate, learned Advocate appearing for the applicant has submitted that now the cause does not survive and therefore the FIR may be quashed and set aside.

12. This Court has referred to the land mark decision of Hon'ble Supreme Court in case of **Parbatbhai Aahir vs. State of Gujarat** reported in 2017 SCC online SC 1189 and in case of **State of Madhyapradesh vs. Laxmi Narayan and Others** reported in (2019) 5 SCC 688. Normally, this Court would not entertain the quashing petition in serious offences like offences under Sections 376 and 302 of the IPC. But, in the present case, when the settlement is arrived at between the

applicant-accused and the complainant, and the applicant-accused and victim both have married with each other, therefore, the Court is inclined to entertain the petition. Therefore, with respect, latest law is not applicable to the present case.

13. In view of the aforesaid discussion and the submission made by the learned Advocates appearing for the parties, this Court is inclined to exercise discretion in favour of the applicant vested under Section 482 of the Cr.PC. Therefore, the present petition deserves to be allowed and accordingly stands allowed. FIR being I-11196009200392 of 2020 registered with Jawaharnagar Police Station, Dist. Vadodara City for the offences punishable under Sections 363, 366 and 376(2)(n) of the Indian Penal Code and under Sections 4, 5(1) and 6(1) of POCSO Act, 2012 and all consequential proceedings arising therefrom are hereby quashed and set aside.

14. Rule is made absolute accordingly with no order as to costs.

15. Copy of this order be sent to the concerned Court and concerned Police Station through e-mail / fax.

(DR. ASHOKKUMAR C. JOSHI,J)

BEENA SHAH

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