

2023 SCC OnLine Guj 2291

In the High Court of Gujarat at Ahmedabad
(BEFORE SANDEEP N. BHATT, J.)

Vishnubharthi Sureshbharthi Gauswami

Versus

State of Gujarat

R/Criminal Misc. Application No. 10825 of 2021

Decided on July 19, 2023

Advocates who appeared in this case:

Mr. Dipen F. Chaudhari(6740) for the Applicant(s) No. 1

Notice Served for the Respondent(s) No. 2

Mr. Dhawan Jayswal, APP for the Respondent(s) No. 1

The Order of the Court was delivered by

SANDEEP N. BHATT, J.:— This petition is filed under Section 482 of the Criminal Procedure Code, 1973 ('Code' for short) praying to quash and set aside the FIR being C.R. No. 11195035200352 of 2020 registered with Palanpur Taluka Police Station, Banaskantha as well as POSCO Case No. 20 of 2020 pending in the Court of learned 5th Additional Sessions Judge (Special POCSO Court), Palanpur, Banaskantha.

2. The brief facts leading to filing of this application, as stated in the application, are such that it is alleged in the complaint that on 20.6.2020, when the complainant was sleeping along with her children and when she woke up, she did not find her daughter namely Shilpa aged 17 years and 4 months, after searching her nearby she was not traced out; that as she was having love relation with applicant, respondent no. 2 went to the house of the applicant but it was locked and therefore, she visited house of applicant at Ratanpur but he was not found and thereafter, she came to know from one Chhaganpuri that he had seen the applicant and the victim together and therefore, she filed this complaint, which is sought to be quashed in this application.

3. Heard learned advocates for the parties.

4. Learned advocate Mr. Chaudhari for the applicant submitted that at the time of incident, the victim-girl is more than 17 years and 4 months; that there was a love affair between the applicant and victim; now they are married as per Hindu rituals on 3.2.2021 and also registered the marriage on 4.2.2021; there is a child born out of the wedlock; they are now staying together happily; affidavit to this effect is also filed by the victim along with this application; that this

application is filed after filing of the chargesheet. He, therefore, submitted that there will be no fruitful purpose served if the complaint is continued further and, therefore, prayed to allow this application and quash the impugned FIR.

5. *Per contra*, learned APP Mr. Jayswal has submitted that looking to the offences, more particularly, the provisions of POCSO Act, the application deserves to be dismissed; that now the case is proceeded and is ripe for hearing before the learned trial Court; victim girl was admittedly less than 18 years at the time of incident; even though the victim girl is now staying with the applicant, normally, the Court should be slow in exercising the powers under Section 482 of the Code, when the offences are registered under the special Acts. He, therefore, prayed to dismiss this application.

6. I have considered the rival submissions and perused the material on record. The facts emerge from the record that the victim girl was more than 17 years at the time of incident; her birth date is 2.2.2003 whereas the incident has occurred on 21.6.2020; that the victim and applicant are happily married, staying together and have a child born out of the wedlock; the certificate registering the marriage of the victim and applicant is placed on record; the affidavit of the victim-girl is placed on record stating all the above facts.

7. In view of the above, no fruitful purpose will be served in continuing the proceeding further. On the contrary, if the proceedings are continued further, there will be disturbance in the happy married life of the victim and applicant, which is required to be avoided. This Court cannot overlook the fact that the applicant and the victim girl got married and out of said wedlock, they have a child. For the predominant purpose of the welfare of the victim to ensure her better future life, it is just and proper for this Court to exercise the inherent powers u/s 482 of the Code.

8. Resultantly, this application is allowed. Impugned F.I.R. being C.R. No. 11195035200352 of 2020 registered with Palanpur Taluka Police Station, Banaskantha as well as POSCO Case No. 20 of 2020 pending in the Court of learned 5th Additional Sessions Judge (Special POCSO Court), Palanpur, Banaskantha are hereby quashed and set aside. Direct service is permitted.