

## IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 12832 of 2020

**FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE A.S. SUPEHIA****Sd/-**

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

Versus  
STATE OF GUJARAT

Appearance:

MR PREMAL S RACHH(3297) for the Applicant(s) No. 1  
MS SHRUTI PATHAK, APP(2) for the Respondent(s) No. 1  
MR PRATIK Y JASANI(5325) for the Respondent(s) No. 2

CORAM: **HONOURABLE MR. JUSTICE A.S. SUPEHIA**

Date : 20/10/2020

**ORAL JUDGMENT**

- (1) **RULE.** Learned advocates appearing on behalf of respective parties waive service of notice of rule on behalf of the respective respondents.
- (2) *“There is no school equal to decent home and no teacher equal to virtuous parents.”* :- Mahatma Gandhi. The facts of the present case shatter the thought of the father of our nation.
- (3) By filing the captioned application, the petitioner - accused, a “minor”, is seeking the invocation of powers of this Court under the provision of section 482 of the of the Code of Criminal Procedure, 1973 (for short “the Cr.P.C.”) for quashing of the

FIR being C.R. No.11202057200329 dated 19.08.2020 registered with Sikka Police Station, District: Jamnagar for the offences punishable under section 376 of the Indian Penal Code, 1860 (for short “the IPC”) and sections 4 and 12 of The Protection of Children from Sexual Offences (POCSO) Act, 2012 (for short “the POCSO Act”). Interestingly, the FIR is lodged at the instance of his “minor” wife.

- (4) A bare glance of the F.I.R. dated 19.08.2020, reveals the allegations leveled by the prosecutrix, *inter alia* stating that she was married to the petitioner- accused on 07.02.2015 at the age of 11 years. Her date of birth recorded in the F.I.R. is 06.01.2004. The F.I.R. narrates that she was forced to maintain physical relationship by her husband against her wishes after 2016 when she was taken to her in-laws house. Thus, a girl of 11 years of age was married to the accused by her parents, who was a minor of 17 years of age.
- (5) On the registration of the F.I.R., the prosecutrix was produced before the 7<sup>th</sup> Additional Judicial Magistrate, Jamnagar for recording of her statement under section 164 of the Cr.P.C. This Court has perused her statement, in which she has specifically admitted that she was married to the accused and thereafter she was forced to maintain physical relationship with him after 2017. The Investigation is over and this Court has also perused the papers of the investigation. The investigation officer has collected the marriage invitation card of the prosecutrix and the accused. Thus, the established fact is that the parents had solemnized the marriage of the accused and prosecutrix when they were minor on 07.02.2015. It is also informed by the learned APP that the proceedings under the

Prohibition of Child Marriage Act, 2006 have also been initiated. She has further submitted that the present FIR may not be quashed on the ground of settlement. Reliance is placed by her on the judgement reported in the case of **State of Madhya Pradesh V/s. Laxmi Narayan**, reported in (2019) 5 SCC 688.

- (6) In view of the submissions advanced by the learned Advocate Mr.Rachh, and considering the aforesaid facts, this Court had passed an order dated 08.09.2020 directing the police authorities not to take any coercive steps against the applicant. However, it was also directed that he shall fully cooperate with the investigation.
- (7) During the pendency of the petition, an Affidavit dated 07.10.2020 was filed by the complainant, stating that the dispute has been amicably resolved between the families and she does not want to further pursue the criminal prosecution. Learned advocate Mr.Jasani appearing on behalf of the complainant has urged that he has no objection if the F.I.R. is quashed in view of the settlement. The learned advocates appearing for the respective parties have submitted that in the respective communities of both the boy and the girl, the custom of child marriage is still prevailing and hence, the prosecutrix and the petitioner were married by their parents when they were minors.
- (8) Thus, after the criminal machinery was set in motion at the behest of the complainant, she is not desirous to proceed with the impugned F.I.R. on the ground of settlement which is arrived between the families. Though, this Court is not detrimental or averse to the settlement arrived at between the

families, but the reckless and irresponsible demeanor of the parents of both the boy and the girl cannot be ignored.

- (9) There is a prelude to the aforesaid registration of the F.I.R. which needs to be mentioned. Prior to the registration of the F.I.R. in question, it appears that the father of the accused-petitioner had registered an F.I.R. being C.R.No.11202057200318 on 10.08.2020 before the Sikka Police Station against the brother of the prosecutrix for the offences punishable under sections 363 and 366 of the IPC and the POCSO alleging that the brother of the prosecutrix had kidnapped his daughter (sister of the present applicant-accused) against her wishes. It appears that as a counter-blast to the aforesaid, the present F.I.R. is lodged. The prosecutrix, who was 11 years of age was married to the petitioner-accused of 17 years of age on 07.02,2015. She used to visit her in-laws occasionally. After four years of marriage, it is alleged that the petitioner-accused has forced her to develop physical relationship. As on today both are minors. The parents of the prosecutrix were well aware of all the consequences of getting her married at the age of eleven. Uniformly, the parents of the petitioner are also responsible. Both the parents have imprisoned the minors in marriage and forced them to develop relationship of husband and wife which is a gross violation of their human rights. They are forced by the parents to face the rigors of married life at the tender age despite their being a prohibition under the law. Thus, the genesis of the impugned FIR lies in the child marriage arraigned by the respective parents. It also appears that the FIR is lodged at the behest of the parents invoking provisions of serious offences. The petitioner, a minor is embroiled in the

serious offence of rape by the prosecutrix at the behest of her parents without realizing the consequences. In her tender age the prosecutrix is also made to understand the immorality and dire consequence of offence of rape. The childhood of both the petitioner and the prosecutrix is obliterated by their parents, on two counts, first by marrying them in tender age, and secondly, by involving them in the offence of rape. The facts are suggestive that the minors are used as weapons in order to satisfy their prejudices and egos. The prosecution is lodged taking shelter under the minority of the prosecutrix. The quashing of the F.I.R. is sought by citing the minor age and marriage of the petitioner.

- (10) This Court is of the opinion that the criminal machinery alleging such serious offences under I.P.C and POCSO cannot be allowed to be misused and the parents of such children who resort such tactics cannot be let-off easily without fastening any accountability. Sufficient time has been devoted by the investigating authority in conducting the investigation. The prosecutrix was also produced before the concerned Magistrate. A great deal of time is consumed of this Court including the registry. Hence, in order to avoid such misuse of the penal provisions, I am of the considered opinion that the time is ripe to fasten the liability for sheer wastage of time of State and the Court. Hence, I consider appropriate to impose a cost of Rs.30,000/- . It shall be deposited before the Registry of this Court. The Registry shall further transfer the amount to the Gujarat High Court Legal Service Committee. Since the parents of both the prosecutrix and the petitioner are

responsible for ruining their childhood by dragging them in such a disreputable controversy, the cost shall be shared by them equally.

- (11) In order to see that the relationship between the families does not further deteriorate and the life of both the petitioner and the prosecutrix is maintained smoothly and effortlessly, the impugned FIR and the subsequent proceedings arising therefrom are hereby quashed and set aside in view of the settlement arrived at between the concerned parties. This Court is conscious of the decision of the Apex Court in the case of State of **Madhya Pradesh V/s. Laxmi Narayan (supra)**. The law enunciated by the Apex Court is not applicable to the facts of the present case. Hence, the submissions advanced by the learned APP are rejected. The petition stands allowed. RULE is made absolute accordingly.
- (12) I may part with the observations of (His Lordship K.S.P.Radhkrishnan, J in the case of Aarushi Dhasmana V Union of India, 2013 (9) SCC 475) – *“Law of this land has always recognised the rights of parents with their wards/minors and first and foremost consideration of the Court is “welfare of the children”, which overrides the views or opinions of the parents.”*

Sd/-  
[A. S. SUPEHIA, J]

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NEHA GUPTA // Bhavesh-[pps]\*