

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL MISC.APPLICATION No. 17521 of 2011****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

1.	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2.	To be referred to the Reporter or not ?	No
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, 1950 or any order made thereunder ?	No
5.	Whether it is to be circulated to the civil judge ?	No

JORAJI MANAJI THAKOR & 3 - Applicant(s)**Versus****STATE OF GUJARAT & 1 - Respondent(s)****Appearance :**

MR VR HALANI for Applicant(s) : 1 - 4.

MR LB DABHI, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,

RULE SERVED BY DS for Respondent(s) : 2,

MR TEJAS P SATTA for Respondent(s) : 2,

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**Date : 29/02/2012****ORAL JUDGMENT**

[1.0] Present Criminal Miscellaneous Application under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “CrPC”) has been preferred by the applicants herein – original accused to quash and set aside the impugned FIR being C.R. No.I-78/2011 registered with Bhabhar Police Station, District

Banaskantha lodged by respondent No.2 herein – original complainant for the offences punishable under Sections 363, 366, 376, 506(2) and 114 of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”).

[2.0] That respondent No.2 herein – original complainant has lodged the impugned FIR being C.R. No.I-78/2011 with the Bhabhar Police Station, District Banaskantha against the applicants herein and others for the offences punishable under Sections 363, 366, 376, 506(2) and 114 of the IPC alleging *inter-alia* that her daughters had ran away with the son of applicant No.1 herein and it is alleged that the son of applicant No.1 had kidnapped the daughters of the complainant and that the applicants being the family members of the boy, who has run away with the daughters of the complainant, have abetted him in kidnapping the daughters of the complainant. That after the investigation, applicants are charge-sheeted. Hence, the applicants have preferred the present Criminal Miscellaneous Application under Section 482 of the CrPC to quash and set aside the impugned criminal proceedings.

[3.0] Shri V.R. Halani, learned advocate appearing on behalf of the applicants has vehemently submitted that as such the applicants have not committed any offence as alleged. It is submitted that as such the son of applicant No.1 had ran away with daughters of the original complainant and infact the applicants tried to trace them out. It is submitted that even considering the police statement of the alleged victim girls, namely Leelaben and Bhartiben, it cannot be said that the the applicants have committed

any offence as alleged. It is further submitted that even from the further statement of the original complainant recorded by the police on 20.08.2011, it is revealed that the applicants herein came to be arraigned as accused in the FIR only with a view to see that the missing girls are traced out. Therefore, it is submitted that as no role is attributed to the applicants by the prosecution for abetting the son of applicant No.1 in running away with daughters of the complainant, to continue the criminal proceedings against the applicants would be unnecessary harassment to them and same shall be abuse of process of law and the Court and therefore, it is requested to allow the present application and to quash and set aside the impugned criminal proceedings so far as the applicants are concerned.

[4.0] Application is opposed by Shri Satta, learned advocate appearing on behalf of the original complainant. An affidavit-in-reply is also filed. Present application is opposed mainly on the ground that as the applicants are charge-sheeted and are shown as co-accused they shall be relegated to approach the concerned Magistrate by submitting application for discharge and therefore, it is requested not to exercise powers under Section 482 of the CrPC. However, he is not in a position to show any material against the applicants by which it can be said that the applicants have committed any offence as alleged.

[5.0] Shri L.B. Dabhi, learned Additional Public Prosecutor appearing on behalf of the State and/or Investigating Officer has requested to pass appropriate order considering the facts and

circumstances of the case, more particularly, considering the statement of the daughters of the original complainant as well as further statement of respondent No.2 – original complainant recorded by the IO on 20.08.2011.

[6.0] Heard the learned advocates appearing on behalf of the respective parties at length and perused the investigation papers produced by the IO. During the course of investigation the IO has recorded the statements of the alleged victim girls, namely Leelaben and Bhartiben, daughters of the original complainant and from the same it appears that they have gone voluntarily with the son of applicant No.1 and they have moved from one place to another place and even they were doing the labour work also. From the police statements of the daughters of the complainant – alleged victim girls, no role is attributed to the applicants that the applicants abetted in running away the alleged victim girls with the son of applicant No.1. It appears that the daughters of the original complainant were missing and they were not traced out, the original complainant has arraigned the applicants – family members of the boy who has run away with the daughters of the complainant. Even from the further statement of respondent No.2 himself recorded by the police on 20.08.2011, it is revealed that the applicants herein came to be arraigned with as accused in the FIR by respondent No.2 – complainant only with a view to see that missing girls are traced out. Having perused and considered the investigation papers, it appears that no role is attributed to the applicants by the prosecution for which they are charge-sheeted. Even a *prima facie* case is not made out against the applicants for

the offences alleged and for which they are charge-sheeted. Considering the entire papers, this Court is of the opinion that no case is made out against the applicants at all and therefore, to continue the criminal proceedings, the applicants would be unnecessary harassment to them and same shall be abuse of process of law and the Court and they have to face the trial unnecessarily. Under the circumstances, this Court is of the opinion that this is a fit case to exercise powers under Section 482 of the CrPC and to quash and set aside the impugned criminal proceedings so far as the applicants herein are concerned.

[7.0] In view of the above and for the reasons stated above, present Criminal Miscellaneous Application succeeds and the impugned FIR being C.R. No.I-78/2011 registered with Bhabhar Police Station, District Banaskantha as well as the charge-sheet filed against them arising out of the impugned FIR are hereby quashed and set aside so far as the applicants herein are concerned. However, the same shall be without prejudice to the rights and contentions of the prosecution / original complainant against rest of the accused which shall be tried in accordance with law and on merits and without in anyway being influenced by the present order which should be *qua* the applicants only. Rule is made absolute to the aforesaid extent.

(M.R. Shah, J.)

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