

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 19851 of 2015**

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HEENABEN SHANKERBHAJ VASAVA

Versus

STATE OF GUJARAT & 2 other(s)
=====

Appearance:

MR IQBALM MALIK for the Applicant(s) No. 1

MR PRADIP J PATEL(5896) for the Respondent(s) No. 3

Ms. Monali Bhatt, APP for the Respondent(s) No. 1
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CORAM: HONOURABLE MS. JUSTICE SONIA GOKANI

Date : 06/05/2016

ORAL ORDER

This petition is preferred seeking quashment of the complaint with the following prayers :-

- (A) *Be pleased to admit and allow this Criminal Misc. Application;*
- (B) *Your Lordships may be pleased to quash and set aside the impugned FIR being CR.I-119/2015 dated 6.6.2015 registered under Section 364, 365, 102-B and 343, 465, 468, 471, 395 of the IPC .*
- (C) *Pending admission hearing and final disposal of this petition Your Lordships may be pleased to stay the further proceeding of the FIR being Cr.No.I-119/2015 dated 6.6.2015 registered with Godhara Police Station, under Section 364, 365, 102-B and 343, 465, 468, 471, 395 of the IPC.*
- (D) *Any other and further relief/s may kindly be granted in the interest of justice ;*

This Court vide its order dated 17th February, 2016 had requested learned advocate Mr.Anand Yagnik to act as an *amicus curiae*. It places on record word of appreciation for the

industrious efforts made by him. In the matter on hand, it appears that during the course of hearing marathon efforts have been made to ensure that the petitioner receives maintenance, which was awarded. As in the divorce deed which is placed on record before this Court, she had foregone her rights.

This Court heard extensively both the sides. It is version of the petitioner that a false complaint is filed against her. She is desirous of getting the amount of maintenance and also made a request for restitution of conjugal rights. The husband has avoided summons and notices. The arrears of maintenance mounted to Rs. 2.50 Lakhs. The Family Court awarded sum of Rs. 5,000/-per month towards the maintenance allowance is urged that she is a tribal woman, who has been forced to get her maintenance amount .

An application was moved by the husband for the restitution of conjugal rights, where she had made a request for grant of maintenance, and therefore, he chooses not to pursue the same.

It is also urged that has urged that during the course of alleged kidnapping, the marriage has already been consummated. They had also been guest of maternal uncle and it was during the time when they were married, the summons which were issued were avoided for four years that the complaint of kidnapping has been made by the husband that

she has also confined that out of coercion she has entered into deed of divorce and act of his rights.

Mr. Pradip Patel, learned advocate appearing for the respondent No.3 submits that as an officer of the Court, he too has attempted to convenience the respondent for making the payment of maintenance to the wife. He further submits that the respondent No.3, who is brother of the husband had no objection, if the complainant is being quashed and the petition being allowed with consent of the parties and the sources of this consent is deed of divorce entered into by the petitioner and her husband wherein, she has foregone all her rights of maintenance and she has also given divorce without asking for any other rights flowing from such act of divorce. **However, he has objected to the Court quashing the complaint disbelieving the deed of divorce and keeping the rights of the petitioner open to challenge the divorce deed entered into by and between the parties. This inconsistent stand also is something which deserves deprecation. The private parties, who otherwise in know of the law, where chooses to agree to quash the complaint provided petitioner forgoes all her rights on the basis of her compromise as Deed of Divorce. However, if that very question by the Court or respond as serious objection if the complaint is being quashed on merits**

Having heard both sides, this petition deserves to be allowed for the reasons to follow hereinafter.

It is not in dispute that matrimonial issues between the petitioner and her husband, who is brother of the complainant, have been amicably resolved by a Divorce Agreement dated 16th June, 2015. Further, learned advocate for the respondent No.3 -original complainant has no objection, if the complaint is quashed and the petition is allowed with consent of the parties and the source of the consent is deed of divorce entered into by the petitioner and her husband wherein, she had forgone all her rights of maintenance, this petition deserves consideration. Therefore, considering the long drawn litigation between the parties and keeping in view the decision of the Apex Court rendered in case of **Jitendra Raghuvanshi & Ors. v. Babita Raghuvanshi & Anr.**, reported in 2013 (3) GLR 1875, the request made is acceded to.

Apt it would be to reproduce the relevant observations made by the Apex Court in case of **Jitendra Raghuvanshi & Ors. v. Babita Raghuvanshi & Anr.**, reported in 2013 (3) GLR 1875, which reads thus-

"14. The inherent powers of the High Court under Section 482 of the Code are wide and unfettered. In B.S. Joshi (Supra), this Court has upheld the powers of the High Court under Section 482 to quash criminal proceedings where dispute is of a private nature and

a compromise is entered into between the parties who are willing to settle their differences amicably. We are satisfied that the said decision is directly applicable to the case on hand and the High Court ought to have quashed the criminal proceedings by accepting the settlement arrived at.

24. In our view, it is the duty of the courts to encourage genuine settlements of matrimonial disputes, particularly, when the same are on considerable increase. Even if the offences are non-compoundable, if they relate to matrimonial disputes and the court is satisfied that the parties have settled the same amicably and without any pressure, we hold that for the purpose of securing ends of justice, Section 320 of the Code would not be a bar to the exercise of power of quashing of FIR, complaint or the subsequent criminal proceedings.

16. There has been an outburst of matrimonial disputes in recent times. The institution of marriage occupies an important place and it has an important role to play in the society. Therefore, every effort should be made in the interest of the individuals in order to enable them to settle down in life and live peacefully. If the parties ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law, in order to do complete justice in the matrimonial matters, the courts should be less hesitant in exercising its extraordinary jurisdiction. It is trite to state that the power under Section 482 should be exercised sparingly and with circumspection only when the court is convinced, on the basis of material on record, that allowing the proceedings to continue would be an abuse of the process of the court or that the

ends of justice require that the proceedings ought to be quashed. We also make it clear that exercise of such power would depend upon the facts and circumstances of each case and it has to be exercised in appropriate cases in order to do real and substantial justice for the administration of which alone the courts exist. It is the duty of the courts to encourage genuine settlements of matrimonial disputes and Section 482 of the Code enables the High Court and Article 142 of the Constitution enables this Court to pass such orders.

In the result, this Criminal Misc. Application is allowed. The F.I.R. being CR No. I-119 of 2015 filed before Godhara Police Station for the offence punishable under Sections 364, 365, 102-B, 343, 395, 465, 468 and 471 of the IPC is hereby ordered to be quashed. All consequential proceedings pursuant thereto shall stand terminated. The petitioner shall be at liberty to pursue her application for maintenance which she has been pursued for past many years .

Rule is made absolute. Direct service is permitted.

(SONIA GOKANI, J)

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