

(x) *There is yet an exception to the principle set out in propositions (viii) and (ix) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.* " a b

13. Considering the submissions advanced by the learned advocates appearing on behalf of both the parties and the affidavit of the respondent no.2 on record, this Court found that the compromise is genuine. This Court has also considered the ratio laid down in the above referred judgments and it appears that further continuation of the Atrocity Special Case in relation to the impugned FIR against the applicants would be unnecessary harassment to them and continuation of proceedings may further trigger tension and relationship between the parties would get strained. Therefore to secure justice, impugned FIR is required to be quashed and set aside exercising the discretion under Section 482 of CRPC. c d

14. In view of the above, the application is allowed and the impugned FIR being CRNO.II 3454/2018 registered before the Navrangpura Police Station, Ahmedabad is hereby quashed and set aside. Consequently, all the other proceedings arising out of the aforesaid FIR are also quashed and set aside qua present applicants. Rule is made absolute to the aforesaid extent. Direct service is permitted. e f

Result:- FIR quashed. f

**ABC 2020 (I) 66 GUJ
ACQUITTAL & BAIL CASES
HIGH COURT OF GUJARAT** g

(S.H.Vora, J.)

Criminal Misc Application No 22073 of 2019

Decided on 29 November, 2019

VISHNUBHAI GOVINDBHAI DANTANI - Applicant(s). h

Versus

STATE OF GUJARAT - Respondent(s).

Law Covered:- (A) *Code of Criminal Procedure, 1973— Section 482— Indian Penal Code, 1860 — Sections 363, 366 & 376 —*

a *Protection of Children From Sexual Offences (POCSO) Act, 2012 – Section 4 & 6 – Accused-applicant & the victim girl married & prior to the victim girl had delivered child – proceedings quashed. (Para 13)*

b (B) *Code of Criminal Procedure, 1973 – Section 482 – Quashing of serious offences on the ground of settlement – Held, serious offence as one u/s 376 of the IPC cannot be subject matter of quashment on the ground of settlement between the accused & the victim – Applicant and the victim have a child – Complainant & the victim insist for quashment – Held, such situation is an exception to the approach – for the pre-dominant purpose of the welfare of the victim to ensure her better future life – criminal*
 c *proceedings on the ground of settlement quashed – Indian Penal Code, 1860 – Section 363, 366 & 376 – Protection of Children From Sexual Offences (POCSO) Act, 2012 – Section 4 & 6. (Para 13)*

d **Held:-** It is now settled that in serious offence as one u/s 376 of the IPC cannot be subject matter of quashment of the proceedings initiated u/s 482 of the Code of Criminal Procedure, 1973 on the ground of settlement between the accused and the victim. Suffice it to refer the various decisions rendered by the Hon'ble Apex Court on such aspect, more particularly, in cases of *Anita Maria Dias Vs. State of Maharashtra* reported in (2018) 3 SCC 290, *Shimbu Vs. State of Haryana* reported in (2014) 13 SCC 318 and *Parbatbhai Ahir Vs. State of Gujarat* reported in (2017) 9 SCC 641. However, this Court cannot overlook the fact that the applicant and the victim have a child. Such situation is an exception to the approach to deal with the proceedings
 e initiated u/s 482 of the Code of Criminal Procedure, 1973 on the basis of settlement between the victim and the accused and for the pre-dominant purpose of the welfare of the victim to ensure her better future life, it is just and proper for this Court in exercise of extraordinary inherent powers u/s 482 of the Code of Criminal
 f Procedure, 1973 could quash the impugned criminal proceedings on the ground of settlement between the parties in cases where the accused has married and the complainant and the victim insist for quashment of impugned criminal proceedings. (Para-13)

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 h **Counsel:-** For Applicant(s): Mr Niral R Mehta, Adv.
 For Respondent(s): Ms Krina Calla, Adv.

Cases Referred:-

1. *Anita Maria Dias Vs. State of Maharashtra*, (2018) 3 SCC 290, (Para-13)
2. *Shimbu Vs. State of Haryana*, (2014) 13 SCC 318, (Para-13)
3. *Parbatbhai Ahir Vs. State of Gujarat*, (2017) 9 SCC 641, (Para-13)

ORDER

S.H.VORA, J.: - 1. Leave to amend. Necessary amendment be carried out accordingly. **a**

2. Learned advocate Mr.Shaival Patel states that he has instructions to appear for victim girl and seeks permission to file appearance. Permission is granted. **b**

3. Learned advocate Mr.Patel confirms identity of victim girl, who is present before the Court and admits genuineness and correctness of affidavit filed through learned advocate Mr.Patel which is ordered to be taken on record. **c**

4. Rule. Learned A.P.P. and learned advocate Shaival Patel waive service of Rule for respondent Nos.1,2,3 and 4 respectively.

5. With the consent of learned advocate for the applicant and learned advocate for respondents, present application is taken up for final disposal today. **d**

6. By way of the present application under Section 482 of the Code of Criminal Procedure, 1973 (for short, the 'Code'), the applicant prays for quashing and setting aside the F.I.R. being C.R.No.I-4 of 2017 registered with Kalol Taluka Police Station, Gandhinagar for the offence punishable under Sections 363, 366 and 376 of the Indian Penal Code and under the provisions of Sections 4 and 6 of the POCSO Act. **e**

7. Learned advocate for the applicant has taken this Court through the factual matrix arising out of the present applications. **f**

8. It appears that the applicant and the victim girl married on 11.03.2019 and prior to their marriage, the victim girl had delivered child on 25.05.2017. The birth certificate is produced at page No.35 to the application. **g**

9. The applicant is facing aforementioned offences instituted by the same complainant for the alleged incident suffered by her daughter.

10. It is now stated at bar that the applicant, respondent No.4 and the victim have settled the dispute amicably and the victim has no grievance against the applicant. Not only that the victim and the applicant have married and they have child. Learned advocates appearing for the respective parties have placed on record photocopy of birth certificate issued on 15.02.2018, which is ordered to be taken **h**

on record. Thus, they have daughter aged about two years and 6 months.

a

11. It is in light of this aspect, the applicant, respondent No.4 and the victim urged that impugned criminal proceedings being both the FIR may be quashed.

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12. Learned advocate Mr.Patel appearing for the contesting respondent No.4 and the victim points out that since the victim has already married with the applicant, it will be more in her interest that the impugned criminal proceedings may be quashed, as otherwise, their marital life will be put into jeopardy and there is no one to take care of her as well as her child.

c

13. It is now settled that in serious offence as one u/s 376 of the IPC cannot be subject matter of quashment of the proceedings initiated u/s 482 of the Code of Criminal Procedure, 1973 on the ground of settlement between the accused and the victim. Suffice it to refer the various decisions rendered by the Hon'ble Apex Court on such aspect, more particularly, in cases of *Anita Maria Dias Vs. State of Maharashtra* reported in (2018) 3 SCC 290, *Shimbu Vs. State of Haryana* reported in (2014) 13 SCC 318 and *Parbatbhai Ahir Vs. State of Gujarat* reported in (2017) 9 SCC 641. However, this Court cannot overlook the fact that the applicant and the victim have a child. Such situation is an exception to the approach to deal with the proceedings initiated u/s 482 of the Code of Criminal Procedure, 1973 on the basis of settlement between the victim and the accused and for the predominant purpose of the welfare of the victim to ensure her better future life, it is just and proper for this Court in exercise of extraordinary inherent powers u/s 482 of the Code of Criminal Procedure, 1973 could quash the impugned criminal proceedings on the ground of settlement between the parties in cases where the accused has married and the complainant and the victim insist for quashment of impugned criminal proceedings.

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14. In view of the aforementioned aspect, more particularly, in light of the statements made by respondent No.4 and the victim supported by duly affirmed affidavit placed on record through their learned advocate Patel, this Court is inclined to consider the plea for quashment of the impugned criminal proceedings, as otherwise, it will detrimentally affect the family life of the victim girl and even the balance and harmony that could be achieved by them in the resolution of disputes that again be irrecoverably lost.

h

15. Since now, the dispute with reference to the impugned F.I.R. is settled and resolved by and between parties which is confirmed by the original complainant and victim through their learned advocate, the trial would be futile and any further continuation of proceedings would amount to abuse of process of law. Therefore, the impugned F.I.R. is required to be quashed and set aside in view of peculiar facts of the case being exception to the general principle of law to decline the quashment of proceedings of the nature like present one.

16. In view of this position, this application is allowed. Impugned F.I.R. being C.R.No.I-4 of 2017 registered with Kalol Taluka Police Station, Gandhinagar and as well as Special Case (Pocso) No.54 of 2017 pending before the learned Special Judge (Pocso), Gandhinagar against the present applicant are hereby quashed and set aside. The applicant will produce certified copy of this order before the concerned learned Sessions Court and also before the investigating officer for necessary action. Rule is made absolute to the aforesaid extent. Direct service is permitted.

Result:- FIR quashed.

**ABC 2020 (I) 70 GUJ
ACQUITTAL & BAIL CASES
HIGH COURT OF GUJARAT**

(S.H.Vora, J.)

Special Civil Application No 21602 of 2019

Decided on 17 December 2019

MOHSIN @ BHEDIYA AMIRMIYA SHAIKH - Applicant(s).

Versus

STATE OF GUJARAT - Respondent(s).

Law Covered:- Indian Penal Code, 1860 – Section 379 – Gujarat Prevention of Anti-Social Activities (PASA) Act, 1985 – Section 3(2) – Invocation of PASA – Registration of offences u/s 379 – Held, simplicitor registration of FIR/s by itself cannot have any nexus with the breach of maintenance of public order – the authority cannot have recourse under the PASA Act – no other relevant & cogent material exists for invoking power u/s 3(2) – Petition allowed. (Para 6)

January 2020