

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 20420 of 2017

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AMIT BABUBHAI VAGHELA(DARJI)
Versus
STATE OF GUJARAT & ORS.

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Appearance:

MR HEMANT B RAVAL(3491) for the Applicant(s) No. 1
MS PRITI PANDYA(2365) for the Applicant(s) No. 1
MR. DHAWAN JAYSWAL LD. ADDL. PUBLIC PROSECUTOR for the
Respondent(s) No. 1
UNSERVED EXPIRED (R) for the Respondent(s) No. 3

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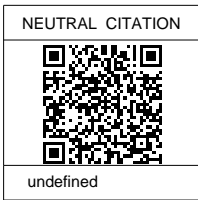
CORAM:HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

Date : 09/05/2024

ORAL ORDER

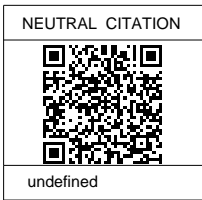
1. By this application under section 482 of the Code of Criminal Procedure,1973, the applicant seeks to invoke the inherent powers of this Court praying for quashing of the first information report being C.R. No.I-29 of 2017 registered before the Khambha Police Station at Amreli for the offence punishable under sections 363 and 366 of the IPC and under Section 18 of the POCSO Act.

2. Briefly stated the facts of the present case are that the impugned FIR came to be filed by one Arvinbhai Hipabhai Zala stating that he is having three children, two sons and one daughter wherein son Pradip is the elder one, aged about 20 years and younger to Pradip is his daughter, namely, Jyotsna, aged about 17 years 10 months and twenty two days, whose

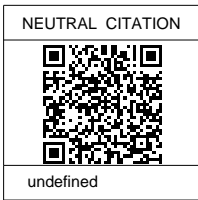


date of birth is 18.07.1999. It has been further stated in the complaint that on 04.06.2017, when the complainant and his wife Kailashben was sleeping in the noon after taking lunch, at that point of time, the daughter of the complainant, namely, Jyotsna went for a natural call at around 1:30 and did not return. Therefore, the complainant started combing his daughter in the village, however, he could not find his daughter Jyotsna. Therefore, the complainant returned back to his home and informed about the same to his wife Kailashben, whereupon, the wife of the complainant told him that Jyotsna is having relationship with one Amit Babubhai Vaghela, working as a tailor in the nearby house of Dhirubhai Jivabhai Darji. Therefore, the complainant went there, however, the said Amitbhai Babubhai was not available there. The complainant also tried to find out the whereabouts of his daughter in the nearby villages as well as his relatives, but in vain. Thus, the impugned FIR came to be lodged by the complainant alleging that one Amitbhai Babubhai Vaghela of village Shanavankiya has abducted his daughter Jyotsna by enticing her with the false promises of getting married with her and thereby committed the offence of abduction and kidnapping.

3. Learned advocate Mr. Hemant Raval appearing for the applicant submits that the applicant is innocent and has been falsely implicated in the present offence. He further submits that the impugned FIR has been filed by the father of the girl alleging that the applicant-accused has abducted his daughter Jyotsna who was minor at the time of the alleged incident. Learned advocate Mr. Raval also submits that, in fact, the

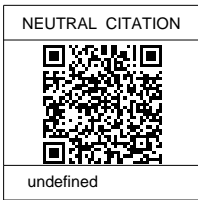


applicant-accused and the daughter of the complainant developed intimacy towards each other and fell in love as they were residing in the same vicinity and at the time of the alleged incident, the daughter of the complainant was major aged about 18 years. Learned advocate Mr. Raval submits that in support of his submissions, he has already annexed a xerox copy of the birth certificate of Jyotsnaben issued by the competent authority, the original of which has also been shown to this Court by the learned advocate Mr. Raval during the course of arguments, indicating the date of birth of Jyotsnaben as 18.07.1997. He has further submitted that the applicant-accused and the daughter of the complainant got married on 24.03.2016 which was then got registered before the Office of the Registrar of Marriage, Rajula at Amreli and, therefore, considering the birth date of the girl as per the birth certificate produced by him, she was above 18 years at the time of registration of the marriage. Learned advocate Mr. Raval further submits that there was a love affair between the applicant-accused and the daughter of the complainant, however, as the complainant was against the said relationship, the daughter of the complainant left the house and eloped with the applicant-accused to get married with him. Accordingly, they got married with each other on 24.03.2016 at Rajula which was then got registered with the Office of the Registrar of Marriage, Rajula, Amreli and now they are the legally wedded husband and wife. Therefore, by any stretch of imagination, it cannot be said that the applicant-accused has abducted the daughter of the complainant and she was minor at the time of the alleged incident. Learned advocate Mr. Raval



also submits that the wife of the applicant, i.e, the alleged victim girl has also filed an affidavit specifically stating that a false and fabricated complaint has been filed by her father and she has already got married with the applicant on 24.03.2016 at Rajula which was subsequently got registered at the Office of the Registrar of Marriage at Rajula on 28.03.2016. Thus, considering the above stated factual aspects, the impugned FIR is nothing but a clear cut abuse of process of law and, therefore, the same is required to be quashed and set aside.

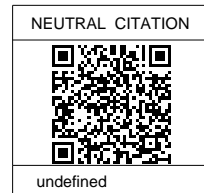
4. On the other hand, this application has been vehemently opposed by learned APP Mr. Dhawan Jayswal appearing for the respondent-State. He submits that as soon as the FIR came to be lodged, the applicant-accused approached this court by filing the present application and obtained an order of stay. However, as strong suspicion was raised as regards the genuineness of the birth certificate of the victim girl, the Hon'ble Court orally directed to carry out the investigation in this regard and verify the genuineness and authenticity of the said birth certificate. Accordingly, investigation was ensued and during the course of investigation, the concerned investigating officer visited the Birth and Death Registration Office at village Raida and recorded the statement of then Talati cum Mantri wherein the said Talati cum Mantri has very specifically stated that the seal and the signature affixed on the said document is not from their office and the same might have been forged by somebody. Learned APP also submits that recently the statement of the present Talati cum Mantri has also been recorded wherein, after scrutinizing the documents,



he has opined that the seal and the signature appears on the birth certificate are not of their office and, therefore, there are corroborative statements made by both the then Talati cum Mantri as well as the present Talati cum Mantri. Learned APP further submits that the birth certificate produced along with the memo of the application shows the date of birth of the victim girl as 18.07.1997 and, therefore, it seems that the applicant-accused has created a false and fabricated birth certificate of the girl and produced before the Office of Registrar of Marriage as genuine one for getting their marriage registered by showing the victim girl as major. In short, it can be said that, with a mala fide intention to get out from the clutches of law and to get a favourable order from this Court, the applicant-accused has shown audacity to prepare a false and fabricated birth certificate of the victim girl and produced before this Court which is the highest Court of the State. Therefore, the act, action and conduct on the part of the applicant-accused is required to be dealt with seriously and appropriate criminal proceedings be initiated against the guilty persons. Any High Court is the highest authority of the State and despite knowing the said fact, the applicant-accused has shown audacity to produce false and fabricated document before this Court knowing fully well that such document is not genuine one. Therefore, considering the above stated factual aspects, the present application deserves to be rejected.

5. I have heard the learned counsel appearing for the respective parties and perused the record.

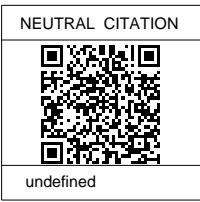
6. It appears from the record that the applicant-accused and



the victim girl was in love with each other and one fine day, eloped from their respective houses and got married. There is no dispute to this. However, the most disturbing feature is that at the time of the incident in question, the girl was minor and to hide the said fact, the applicant-accused has gone to the extent of creating false and fabricated birth certificate of the girl. Not only that, after preparing such a false certificate, the applicant-accused has dared to produce the same before this Court to get a favourable order knowing fully well that the said certificate is forged one. Thus, it can be said that the applicant-accused has tried to mislead the Court by producing fake documents. Moreover, the applicant-accused has committed two offences; first to elope with the minor girl against the will and wish of her parents and then got married with her, and secondly, false and fabricated document in the form of birth certificate has been produced by the applicant-accused to mislead the Court with a sole intent to get favourable order. Thus, this Court, being the highest authority of the State, cannot tolerate or allow such kind of malpractice on the part of the litigants to play with the Court of law and, therefore, I am of the view that the present application deserves to be with cost.

7. Accordingly, the present application fails and is hereby rejected with the cost of Rs.15,000/- to be deposited with the High Court Legal Services Committee within a period of one month from the date of receipt of copy of this order.

8. Considering the peculiar facts and circumstances of the present case, as stated above, the Registrar General of this



Court is hereby directed to appoint an Officer, not below the rank of Deputy Registrar, for initiating appropriate action against the applicant-accused or any other guilty person.

(DIVYESH A. JOSHI,J)

VAHID