

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL MISC.APPLICATION NO. 8403 of 2017
With
R/SPECIAL CRIMINAL APPLICATION NO. 5801 of 2015

=====

HITESH ISHWARBHAI MISAREEYA & 1 other(s)
Versus
STATE OF GUJARAT & 1 other(s)

=====

Appearance:
MR ND NANAVALY, SENIOR COUNSEL with MR DHARMESH R
PATEL(5592) for the Applicant(s) No. 1,2
MR PUNAM G GADHVI(3724) for the Respondent(s) No. 2
MR HARDIK MEHTA, ADDITIONAL PUBLIC PROSECUTOR for the
Respondent(s) No. 1

=====

CORAM: HONOURABLE MS. JUSTICE GITA GOPI

Date : 25/01/2023

ORAL ORDER

**ORDER IN CRIMINAL MISC. APPLICATION NO.8403 OF
2017**

1. The above application/s/petition/s have been filed under Section 482 of the Code of Criminal Procedure, 1973 for quashing and setting aside the First Information Report bearing I-C.R. No.185 of 2015 registered with Vatva Police Station, Ahmedabad City for the offences punishable under Sections 304, 313, 314, 120(B), 114 of the Indian Penal Code and under Sections 22 of the Pre-Conception and Pre-Natal

Diagnostic Techniques Act, 1994 as well as the Criminal Case No.894 of 2015 pending before the learned Additional Chief Metropolitan Magistrate, Court No.18, Ahmedabad.

2. Learned Advocate for the complainant Mr. Punam G. Gadhvi has relied on the Affidavit dated 31.08.2022 of the complainant – Aluben Dayabhai Gohil, i.e. mother of the deceased victim and submits that the complainant does not wish to proceed with the complaint as there is no grievance against the accused – Hitesh Ishwarbhai Misareeya and Mehulbhai Jayantibhai Panchal, who are stated to be the accused No.2 and 3 in the charge-sheet. The accused No.3 was the Director of the Hospital at the relevant point of time. Further, the complainant has stated that the Affidavit is filed without any influence and pressure and the victim has put her thumb impression.

3. Learned Additional Public Prosecutor Mr. Hardik Mehta has vehemently objected to the above settlement and submitted that such kind of attitude of the victims have encouraged the Doctors and others

as well as the in-laws of the victims women to conduct such prenatal diagnostic test for the determination of the sex of the fetus and because of such approach of the Doctors, the sex ratio between males and females has led to insecurity and created an imbalance where now the Society is facing problems of scarcity of girls.

4. It is further submitted that in the present case, the complainant is the mother of the deceased who was married to Rajeshbhai Jethabhai Singhal and out of the marriage, the deceased was having two daughters. The allegations are to the effect that the husband and parents-in-law were often harassing the deceased and the complainant has stated in the First Information Report that her daughter had informed her about the harassment. It is further stated that the six months prior to the complaint, the daughter had got pregnant and as the in-laws wanted a son, the parents-in-law started forcing the deceased to get the fetus examined. It is alleged that the husband often used to beat the deceased and on account of that, the deceased suffered pain, she started bleeding and was

taken to Navjivan Hospital for treatment, where the husband of the deceased had insisted for pre-natal diagnosis of the fetus. It is alleged that the Doctor had originally refused and the deceased was taken to Darshan Hospital and as per the complaint, the husband was forcing the deceased for removal of the fetus. It is stated by the complainant that her daughter had informed her that a week prior they had gone to Darshan Hospital where they had deposited Rs.20,000/- and the Doctor after conducting the sonography had informed that the deceased was carrying a baby girl. Thereafter, the husband had insisted for simple examination on 03.06.2015 at Navjivan Hospital. The complainant was also asked to join so she accompanied her daughter where the Doctor had informed of the child being normal. Thereafter, they returned back home and it is alleged that on 05.06.2015, the complainant received a phone call from the son-in-law who had asked her to go to Darshan Hospital. The complainant stated that since her daughter was alone, she and the sister-in-law had gone alongwith the daughter in a rickshaw and at Darshan Hospital, they saw the son-in-law –

Rajeshbhai Jethabhai Singhal and the mother-in-law – Lilaben and the Doctor present was Mehul Panchal, who initially had given two tablets to consume and thereafter, the complainant daughter was admitted. The complainant had enquired from the Doctor and the son-in-law but they did not reply. The complainant states since she is illiterate, she could not understand the language and thereafter, the Doctor had started administering the fluids through bottles and had given injection. Thereafter, the Doctor left and returned back at about 5.00 in the evening and had again given some tablets. The complainant alleges that her daughter then started getting loose motion and also started vomiting and on enquiry from the Doctor, it was informed that since the uterus of the deceased was not expanding, some medicines were administered. The complainant then has given further details about the incident that had taken place in the Hospital. It is alleged that forcible abortion was performed after diagnosing the sex of the fetus and the deceased was compelled to undergo abortion, which led to her death.

5. Having gone through the facts of the case, it is unfortunate to note that the complainant is the mother of the deceased and has filed a Settlement Affidavit and has also given her consent for withdrawal of the complaint.

6. In the case of **State of Madhya Pradesh v. Laxmi Narayan and Others** reported in **(2019) 5 SCC 688**, the Apex Court had the occasion to consider the issue as to whether First Information Report lodged for the 2 offences punishable under sections 307 and 34 IPC could be quashed on the basis of the settlement between the parties. While considering the said issue, the Apex Court observed in Para-13 thus :-

“13. Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:

(i) that the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

(ii) such power is not to be exercised in those

prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

(iii) similarly, such power is not to be exercised for the offences under the special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender;

(iv) offences under Section 307 IPC and the Arms Act etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence under Section 307 IPC and/or the Arms Act etc. which have a serious impact on the society cannot be quashed in exercise of powers under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to framing the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/ delegate parts of the body, nature of weapons used etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is

filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

(v) while exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impart on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc.”

7. The offence involved in the present case are serious in nature and the Society at large is affected by such offences under the Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994 and settlement in such kind of offences cannot be accepted. Hence, prima-facie considering the nature of allegations qua the applicant, this Court does not find any reason to entertain the present application and therefore, the same stands rejected.

Sd/-
(GITA GOPI, J)

ORDER IN SPECIAL CRIMINAL APPLICATION NO.5801 OF 2015.

1. Learned Senior Counsel Mr. N.D. Nanavaty seeks permission to withdraw the present petition, with a liberty to move for appropriate relief contending that the petitioner was protected by this Court.
2. Permission with the liberty as prayed for is granted.
3. In view of the above, this petition stands disposed of as withdrawn, with the interim relief granted to the petitioner to remain in force for a period of TWO (2) WEEKS from the date of of this order.

CAROLINE

THE HIGH COURT
OF GUJARAT

Sd/-
(GITA GOPI,J)

WEB COPY