

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION NO. 2482 of 2022**

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THAKOR DEVRAJBHAI RAMANBHAI

Versus

STATE OF GUJARAT

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Appearance:

MR SANJAY PRAJAPATI(3227) for the Applicant(s) No. 1

NOTICE NOT RECD BACK for the Respondent(s) No. 2,3

MS JIRGA JHAVERI ADDL. PUBLIC PROSECUTOR for the Respondent(s)
No. 1

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CORAM:HONOURABLE MS. JUSTICE SONIA GOKANI

and

HONOURABLE MRS. JUSTICE MAUNA M. BHATT

Date : 15/03/2022

ORAL ORDER

(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)

1. The Corpus is brought before us today. She although has produced the affidavit-in-reply stating therein that the applicant had abducted her with false promises and eventually when her father came to know about this marriage she has realised that she cannot stay together. They have not stayed together till date and she has also chosen not to stay with him in future also. Her statement dated 2nd March, 2022 before the police has not been given by her and it is her decision to be with her family to upkeep the dignity and honour and respect of her family.

2. When we inquired from her, her version was completely different than what she has stated in her affidavit-in-reply. She agreed that she was scared and apprehensive of the strong

reactions of the family and that had dithered her from telling the truth.

3. Learned advocate Mr. Anvesh Vyas appearing for the parents of the Corpus has explained to this Court that she had been given to understand as to what were the contents of the affidavit and on realising the same, she has chosen to sign the affidavit. She does not dispute that fact. She is a graduate and 25 years of age.

3.1. However, we can notice that she is completely petrified and does not have any courage to resist her family, more particularly, the father and the brother who accompanied her. We could also notice the overreactions on the part of the brother who otherwise is pursuing his M.Sc. We have restrained ourselves of not writing anything further nor to initiate any actions against him. Considering this to be a momentary reaction to the possible shock the family might have received after her having sworn the affidavit where we can very well appreciate her not having truly disclosed her mind to her family until she was before the Court from where she can join her husband without once again going back to her parents.

4. As she has already married to the petitioner and the registration of the marriage has taken place on 24.5.2021, we have ascertained about the previous marriage of the petitioner, the divorce has already taken place customarily. His parents are also here and they have confirmed that he needed to pay permanent alimony in presence of the caste leaders which was Rs.1 lakh and the relationship of the petitioner with the

Corpus was the reason why the divorce of the petitioner took place.

5. We also on the request of learned advocate Mr. Vyas met the caste leader who had accompanied the father and he has ensured the Court that no untoward incident is likely to happen. However, for the sake of young couple, on noticing the strong reactions of the family, in the presence of the Court also, we deem it appropriate to direct protection to the couple for the period of four weeks. The Superintendent of Police, Mehsana, shall appropriately direct the same and he shall before the end of four weeks shall take a call and decide as to whether there will be requirement of further protection in this case.

6. We would like to quote the decision of the Hon'ble Supreme Court in the case of ***Laxmibhai Chandaragi B. and Anr. v. State of Karnataka and Ors.*** reported in ***(2021) 3 SCC 360***, where it considered the right to marry person of one's choice an integral part of Article 21. It is construed as an autonomy of an individual inter alia in relation to family and marriage is integral to the dignity of the individual.

“10. Educated younger boys and girls are choosing their life partners which, in turn is a departure from the earlier norms of society where caste and community play a major role. Possibly, this is the way forward where caste and community tensions will reduce by such inter marriage but in the meantime these youngsters face threats from the elders and the Courts have been coming to the aid of these youngsters.

11. We are fortified in our view by earlier judicial pronouncements of this Court clearly elucidating that the consent of the family or the community or the clan is not necessary once the two adult individuals agree to enter into a wedlock and that their consent has to be piously given primacy.¹ It is in that context it was further observed that the choice of an individual is an inextricable part of dignity, for dignity cannot be thought of where there is erosion of choice. Such a right or choice is not is not expected to succumb to the concept of “class honour” or “group thinking.”²

12. *In Shafin Jahan v. Asokan K M & Ors.* ³, this Court noticed that the society was emerging through a crucial transformational period.⁴ Intimacies of marriage lie within a core zone of privacy, which is inviolable and even matters of faith would have the least effect on them. The right to marry a person of choice was held to be integral *Article 21* of the Constitution of India. In this behalf, the judgment of the nine Judges Bench in *K.S. Puttaswamy v. Union of India*⁵ may also be referred to where the autonomy of an individual inter alia in relation to family and marriage were held to be integral to the dignity of the individual.”

7. The Apex Court in the case of *Shakti Vahini vs. Union of India and Ors.* reported in **(2018) 7 SCC 192** has referred to various decisions on this aspect and directed as under:

“48. The 'Khap Panchayats' or such assembly should not take the law into their hands and further cannot assume the character of the law implementing agency, for that authority has not been conferred upon them under any law. Law has to be allowed to sustain by the law enforcement agencies. For example, when a crime under [IPC](#) is committed, an assembly of people cannot impose the punishment. They have no authority. They are entitled to lodge an FIR or inform the police. They may also facilitate so that the accused is dealt with in accordance with law. But, by putting forth a stand that they are spreading awareness, they really can neither affect others' fundamental rights nor cover up their own illegal acts. It is simply not permissible. In fact, it has to be condemned as an act abhorrent to law and, therefore, it has to stop. Their activities are to be stopped in entirety. There is no other alternative. What is illegal cannot commend recognition or acceptance.

49. Having noted the viciousness of honour crimes and considering the catastrophic effect of such kind of crimes on the society, it is desirable to issue directives to be followed by the law enforcement agencies and also to the various administrative authorities. We are disposed to think so as it is the obligation of the State to have an atmosphere where the citizens are in a position to enjoy their fundamental rights. In this context, a passage from [S. Rangarajan v. P. Jagjivan Ram and others](#)¹⁴ is worth reproducing:-

“51. We are amused yet troubled by the stand taken by the State

Government with regard to the film which has received the National Award. We want to put the anguished question, what good is the protection of freedom of expression if the State does not take care to protect it? If the film, is unobjectionable and cannot constitutionally be restricted under Article 19(2), freedom of expression cannot be suppressed on account of threat of demonstration and processions or threats of violence. That would tantamount to negation of the rule of law and a surrender to blackmail and intimidation. It is the duty of the State to protect the freedom of expression since it is a liberty guaranteed against the State. The State cannot plead its inability to handle the hostile audience problem. It is its obligatory duty to prevent it and protect the freedom of expression.

We are absolutely conscious that the aforesaid passage has been stated in respect of a different fundamental right but the said principle applies with more vigour when the life and liberty of individuals is involved. We say so reminding the States of their constitutional obligation to comfort and (1989) 2 SCC 574 nurture the sustenance of fundamental rights of the citizens and not to allow

any hostile group to create any kind of trench in them.

50. We may also hold here that an assembly or Panchayat committed to engage in any constructive work that does not offend the fundamental rights of an individual will not stand on the same footing of Khap Phanchayat. Before we proceed to issue directions to meet the challenges of honour crime which includes honour killing, it is necessary to note that as many as 288 cases of honour killing were reported between 2014 and 2016. According to the data of National Crime Records Bureau (NCRB), 28 honour killing cases were reported in 2014, 192 in 2015 and 68 in the year 2016.

51. We may note with profit that honour killings are condemned as a serious human rights violation and are addressed by certain international instruments. The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence addresses this issue. [Article 42](#) reads thus:-

“[Article 42](#) – Unacceptable justifications for crimes, including crimes committed in the name of so-called “honour”

1. Parties shall take the necessary legislative or other measures to ensure that, in criminal proceedings initiated following the commission of any of the acts of violence covered by the scope of this Convention, culture, custom, religion,

tradition or so-called “honour” shall not be regarded as justification for such acts. This covers, in particular, claims that the victim has transgressed cultural, religious, social or traditional norms or customs of appropriate behaviour.

2. Parties shall take the necessary legislative or other measures to ensure that incitement by any person of a child to commit any of the acts referred to in paragraph 1 shall not diminish the criminal liability of that person for the acts committed.”

52. Once the fundamental right is inherent in a person, the intolerant groups who subscribe to the view of superiority class complex or higher clan cannot scuttle the right of a person by leaning on any kind of philosophy, moral or social, or self-proclaimed elevation. Therefore, for the sustenance of the legitimate rights of young couples or anyone associated with them and keeping in view the role of this Court as the guardian and protector of the constitutional rights of the citizens and further to usher in an atmosphere where the fear to get into wedlock because of the threat of the collective is dispelled, it is necessary to issue directives and we do so on the foundation of the principle stated in [Lakshmi Kant Pandey v. Union of India](#)¹⁵, [Vishaka and others v. State of Rajasthan and others](#) ¹⁶ and [Prakash Singh and others v. Union of India and others](#)¹⁷.

53. It is worthy to note that certain legislation have come into existence to do away with social menaces like “Sati” and “Dowry”. It is because such legislation are in accord with our Constitution. Similarly, protection of human rights is the élan vital of our Constitution that epitomizes humanness and the said conceptual epitome of humanity completely ostracizes any idea or prohibition or edict that creates a hollowness in the inalienable rights of the citizens who enjoy their rights on the foundation of freedom and on the fulcrum of justice that is fair, equitable and proportionate. There cannot be any assault on human dignity as it has the potentiality to choke the majesty of law. Therefore, we would recommend to the legislature to bring law appositely covering the field of honour killing.”

8. Any attempt on the part of any person to have the law in their hands shall be sternly dealt with by the police. The couple shall be escorted from the Court premise by the police. The basic belongings of the Corpus, her degree certificates and other testimonies of the Corpus shall be handed over to the lady officer by the parents. Any difficulties if noticed, the same shall be brought to the notice of Superintendent of Police of the District who shall ensure due compliance of the order in its true spirit.

9. With the above, the petition is disposed of.

(SONIA GOKANI, J)

(MAUNA M. BHATT, J)

NAIR SMITA V.