

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 3148 of 2013**

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ABC
Versus
STATE OF GUJARAT & ANR.

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Appearance:

MR VIRAT G POPAT(3710) for the Applicant(s) No. 1
MS TARJANI K ANJARIA(12193) for the Respondent(s) No. 2
MR CHINTAN DAVE, APP for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE J. C. DOSHI**Date : 30/07/2025****ORAL ORDER**

Since the petitioner is minor, in order to protect his identity, he is addressed as "ABC". Registry is also directed to remove his name from its computer records by replacing his name as "ABC".

1. By way of this application under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code"), the petitioner has prayed for quashing and setting aside FIR being C.R.No.I - 8 of 2010 registered with Rajkot Mahila Police Station for the offences punishable under Sections 376, 354, 504, 114 of the IPC as well as all other consequential proceedings arising out of the aforesaid FIR qua the petitioner herein.

2. Heard learned advocates appearing for the respective parties.

3. Learned advocate for the petitioner would submit that the petitioner is not understanding correctness of the FIR in question. He would further submit that even if the FIR in

question is taken as gospel truth, the petitioner was aged 10 and 1/2 years at the time of alleged incident. He would further submit that the birth date of the petitioner is 26.12.1999 as per birth certificate. He would further submit that the incident alleged to have taken place between 10.5.2010 and 23.5.2010 and therefore, the petitioner cannot be more than 11 years at the time of alleged incident. He would refer to section 83 of the IPC as well as judgment in case of Hiralal Mallick Vs. State of Bihar, (1977) 4 SCC 44 to submit that if the accused is less than 12 years, he cannot be treated as accused inter alia on the ground of his lack of majority. He would further submit that there is no forensic intervention carried out to establish that he was major to understand the offence and in that circumstances, he would submit that prosecution against the petitioner may not be continued.

3.1 Learned advocate Mr. Popat also referred to the judgment of the Bombay High Court in case of AK Vs. State of Maharashtra, 2022 LiveLaw (Bom) 430 to buttress the contention.

3.2 Upon above submission, learned advocate Mr. Popat prays to allow the petition.

4. Per contra, learned advocate Ms. Anjaria appearing for the original complainant would submit that allegation levelled in the FIR is of serious nature and whether the petitioner is mature or understanding the seriousness of the offence can be tested during trial and the FIR cannot be quashed on the

touchstone of reading section 83 of the IPC. Upon such submission, she prays to dismiss the petition.

5. Learned APP could not point out that how section 83 of the IPC attracts to the facts of the present case.

6. Having heard learned advocates for both the sides, let refer section 83 of the IPC, which reads as under:-

*“83. Act of a child above seven and under twelve of immature understanding.—
Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.”*

7. Therefore, even if it is an offence, it is proved that the child is more than 7 years of age and under 12 years and not attaining sufficient majority to understand the act which he is alleged to have done and consequences thereof.

8. The Hon'ble Apex Court in case of Hiralal Mallick (supra), in para 10, held as under:-

“10. Adult intent, automatically attributed to infant means, is itself an adult error. It is every day experience that little boy as a class have less responsible appreciation of dangers to themselves or others by injurious acts and so it is that the new penology in many countries immunises crimes committed by children of and below ten years of age and those between the ages of 10 and 14 are 'in a twilight zone in which they are morally responsible not as a class, but as individuals when they know

their act to be wrong'. The Indian Penal Code, which needs updating in many portions, extends total immunity upto the age of seven (S. 82) and partial absolution upto the age of twelve (S. 83). The latter provision reads:

"83. Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion."

The venal solicitude of the law for vernal offenders is essentially a modern sensitivity of penology although from the Code of Hammurabi, the days of the Hebrews and vintage English law, this clement disposition is a criminological heritage, marred, of course, by some periods and some countries. Dr. Siddique mentions that there have been instances in England where children of tender years were given death sentences like the case where two kids of eight or nine years were given capital punishment for stealing a pair of shoes . Criminology: Problems and Perspectives, by Ahmad Siddique: Eastern Book Co.). At least as mankind is approaching the International Year of the Child (1979), the Indian legal system must be sensitized by juvenile justice. This conscientious consciousness prompted us to counsel, counsel to examine the statutory position and criminological projects in the 'child' area. We had to make-do with what assistance we got but hope that when a near-pubescent accused is marched into a criminal court, the Bench and the Bar will be alerted about jus juvenalis, if we may so call it. The compassion of the penal law for juvenescents cannot be reduced to jejunity by forensic indifference since the rule of law lives by law-in-action, not law in the books. Unfortunately, at no stage, from the charge-sheet to the petition for special leave, has awareness of sec. 83 of the Penal Code, the Probation of Offenders Act, 1958 or the Bihar Children Act, 1970, been

shown in this case. May be, the offence charged being u/s. 302 I. P. C. and the guilt ultimately found being of an offence punishable with life imprisonment, account for this non-consideration. Even so, justice to juvenile justice desiderates more from a lively judicial process."

9. The FIR itself records that the petitioner was 11 years old at the time of incident. It is not the case of the prosecution that forensic test was carried out at the relevant time that whether the petitioner was though 11 years old at the time of alleged incident, was mature enough to understand the consequences of the alleged act. According to this Court, the PI, Bhaktinagar Police Station must not have knowledge of section 83 of the IPC or filing of FIR is in defiance of section 83 of the IPC. Under the circumstances, present petition requires consideration.

10. In the case of State of Haryana Vs. B.Bhajanlal & ors., AIR 1992 SC 604, the Hon'ble Apex Court summed up the proposition of law, which reads as under:-

"(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations ins the F.I.R. and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under S.156(1) of the Code except under an order of a Magistrate within the purview of S.155(2) of the code.

(3) Where, the uncontroverted allegations made in the

F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out the case against the accused.

(4) Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under S.155(2) of the Code.

(5) Whether, the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where, there is an express legal bare engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

10.1 The findings of the Hon'ble Apex Court in para 1,3 and 7 are attracted in the present case. In view of above, present petition deserves consideration.

11. Resultantly, present petition is allowed and impugned FIR being C.R.No.I - 8 of 2010 registered with Rajkot Mahila Police Station for the offences punishable under Sections 376, 354, 504, 114 of the IPC as well as all other consequential

proceedings arising out of the aforesaid FIR qua the petitioner herein are hereby quashed and set aside. Rule made absolute to the aforesaid extent. Direct service is permitted.

12. The concerned investigating officer as well as learned trial Court is directed to remove / delete name of the petitioner from the police records, investigation papers as well as Court records to protect identity of the petitioner.

SHEKHAR P. BARVE

(J. C. DOSHI,J)