

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(CRL) 1248/2009 and CrI.M.A.No. 10426/2009**

% Date of Order: 12th March, 2010.

VISHNU KUMAR & ANR. Petitioner
! Through: Mr.Vimal Puggal, Adv.

versus

^ STATE & ANR. Respondent
\$ Through: Mr. Akshay Bipin, ASC with
Mr. R.Sharma, PS Karawal Nagar, Delhi

* **CORAM:**
HON'BLE MR. JUSTICE V.K. JAIN

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the Reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

: **V.K. JAIN, J.(ORAL)**

1. This is petition for quashing FIR No.211/2009 lodged by Respondent No.2 Smt. Nirmal Devi at Police Station Karawal Nagar under Section 363 of IPC. It was alleged in the FIR that the daughter of the complainant, born on 23rd May, 1992, was missing since 21st August, 2009. The FIR was lodged on 28th

August, 2009. In the FIR, Respondent No.2 suspected that her daughter had been induced and taken away by Petitioner No.1 Vishnu Kumar. The petition has been filed jointly by Vishnu and Smt. Sonia, the daughter of the complainant, whose kidnapping was alleged in the FIR.

2. Petitioner No.2 was examined before the Magistrate under Section 164 of Cr.P.C. on 08th September, 2009. In her statement to the Magistrate, she stated that in the night of 20th August, 2009, she left the house of her parents, hired an auto-rickshaw and went to Anand Vihar, ISBT from where she boarded a bus for Aligarh. On reaching Aligarh, she rang up petitioner No.1 from her mobile and asked him to come to Aligarh to take her. Vishnu, however, advised her to go back home. According to the prosecutrix, she refused to go back home and started weeping, whereupon petitioner No.1 reached Aligarh in the vehicle of a friend. He offered to drop her back to her house, but she refused. Thereupon, the petitioner took her to Meerut and next day, she was brought to Noida. On reaching Noida, the petitioner No.1 again offered to drop her at her residence, but she again refused and insisted on marrying him. Thereafter, both of them got married at Arya Samaj

Mandir on 27th August, 2009. She also claimed that the marriage was also solemnized at Tis Hazari Courts.

3. The FIR was registered under Section 363 of IPC on a complaint made by the mother of Sonia. In order to constitute offence punishable under Section 363 of IPC, there has to be taking or enticing of a minor from the lawful guardianship of her parents/guardian. If the minor, of her own, abandons the guardianship of her parents and joins a boy, without any role having been played by the boy in her abandoning the guardianship of her parents and without her having been subjected to any kind of pressure, inducement, etc. and without any offer or promise from the accused, no offence punishable under Section 363 of IPC will be made out when the girl is aged more than 17 years and is mature enough to understand what she is doing. Of course, if the accused lays a foundation by inducement, allurement etc. and that influences the minor or weighs with her in leaving her guardian's custody and keeping and going with the accused then it is difficult to accept that the minor had voluntarily come to the accused.

4. In '**Shyam & Another vs State of Maharashtra**', 1995 Criminal Law General 3974, the prosecutrix was a grown-up

girl, though she had not touched 18 years of age. She claimed during trial that she was kidnapped under threat. The evidence produced during trial showed that she was seen going on the bicycle of the accused. The Hon'ble Supreme Court noted that it was not unknown to her with whom she was going and therefore, it was expected of her then to jump down from the bicycle or put up the struggle and in any case raise an alarm to protect herself. As no such steps were taken by her, the Hon'ble Supreme Court felt that she was a willing party to go with the appellants of her own and, therefore, there was no taking out of the guardianship. The appellants were acquitted of the charge under Section 366 of IPC.

5. In **'State of Karnataka vs Sureshbabu**, 1994 Cr1.L.J.1216(1), it was found that the girl went with the accused voluntarily. It was held by the Hon'ble Supreme Court that the requirement of Section 366 of IPC is that taking or enticing away a minor out of the keeping of the lawful guardianship was an essential ingredient of the offence of kidnapping. It was held that in such a case, it is difficult to held that the accused had taken her away from the keeping of her lawful guardian and something more has to be shown in a

case of this nature, like inducement.

6. In '**Mahabir vs State**', 55(1994) DLT 428, the appellant and the prosecutrix were known to each other. The appellant took the prosecutrix to a place outside Delhi where they stayed for about fifteen days and had sexual intercourse with each other. The appellant was convicted under Sections 366 and 376 of I.P.C. A learned Single Judge of this Court noticed that she had gone to Railway Station, had stood there with the appellant who also went to purchase tickets and then she had travelled with him in a compartment shared by other persons. She had then gone to a house in a tonga and yet she did not lodge any protest and made no attempt to flee despite having ample time and opportunity. The learned Single Judge noted that on the day of reckoning, she surely had crossed mark of sixteen years and since she was all along a willing party, the appellant was acquitted of both the charges against him. Thus, despite the prosecutrix being less than eighteen years of age, the appellant was acquitted not only of charge under Section 376 but also of the charge under Section 366 of I.P.C.

7. In '**Piara Singh vs State of Punjab**', 1998(3) Crimes 570, the High Court found that the prosecutrix was more than

sixteen years of age at the time of this incident, though, the case of the prosecution was that she was fourteen years of old at that time. Since the High Court came into conclusion that no force was used in having sexual intercourse with him, the appellant was acquitted not only of charge under Section 376 but also of charge under Section 366 and 366-A of Indian Penal Code. In this case also, the prosecutrix was not found to be more than eighteen years of age.

8. In '**Bala Saheb vs State of Maharashtra**', 1994 Criminal Law General 3044, it was found that the prosecutrix accompanied the appellant/accused from her village and stayed with him for two to three days. It was held that these circumstances clearly show that offence under Section 363 or 366 of I.P.C. was not made out.

9. In the present case, there has been no coercion, inducement or promise on the part of petitioner No.1. Petitioner No.2 abandoned the guardianship of her parents of her own and in fact, pressurized petitioner No.1 to come to Aligarh and take her with him. She did not heed the advice of petitioner No.1 to go back home and insisted on his marrying her. She repeatedly refused the offer and suggestion of

petitioner No.1 to return to the house of her parents. She being more than 17 years old at that time, she knew the import of what she was doing. She was capable of understanding the implications of the step taken by her. Thus, no role at all was played by petitioner No.1 in petitioner No.2 leaving the house of her parents. No kidnapping, as defined in Section 361 of IPC, is, therefore, made out against petitioner No.1.

10. For the reasons given in the preceding paragraphs, FIR No.211/2006 registered at Police Station Karawal Nagar under Section 363 of IPC is hereby quashed.

11. Copy of the statement under Section 164 of Cr.P.C. may be placed on record.

(V.K.JAIN)
JUDGE

MARCH 12, 2010/bg