

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

% **Crl. M.C. No.2234/2012**

+ Date of Decision: 6th March, 2013

PRAWIN PRAKAHAR & ANR. Petitioners

! Through: Mr. K.K. Rai, Sr. Advocate with
Mr. Awanish Kumar, Advocate

Versus

\$ STATE GOVT. OF NCT OF DELHI & ANR. ...Respondents

Through: Mr. M.N. Dudeja, APP for the
State with SI P.N. Verma, PS Neb
Sarai

Mr. S.D.S. Rathore, Adv. for R-2
with R-2 in person

CORAM:

*** HON'BLE MR. JUSTICE P.K.BHASIN**

ORDER

P.K. BHASIN, J:

Petitioner no.1 is the husband of petitioner no.2 and he is an accused in a case under Section 363 IPC registered against him vide FIR no. 24/2011 on 12th February, 2011 at Police Station Neb Sarai, New Delhi at the instance of respondent no.2 herein, who is the father of petitioner no. 2 who was allegedly kidnapped by petitioner no.1 when she was between 17-18 years of age. By way of this joint petition, the husband and wife have approached this Court under

Section 482 of the Code of Criminal Procedure, 1973 seeking quashing of the above referred FIR and the criminal proceedings emanating therefrom.

2. Quashing of the criminal proceedings against petitioner no.1 has been sought on the ground that petitioner no.2 had at no stage claimed that he had in any way enticed or forced her to accompany him for getting married. On the other hand, after she had been recovered by the police she had categorically claimed in her statements under Sections 161 and 164 Cr.P.C. that she had gone with him out of her own free will and she had married him also on her own volition. It was stated by the learned senior counsel for the petitioners during the course of arguments that she had conceived also after getting married to petitioner no.1.

3. Mr. K.K.Rai, learned senior counsel appearing on behalf of the petitioners had cited one three Judges bench judgment of the Hon'ble Supreme Court in the case of **"S. Varadarajan vs. State of Madras", (1965) 1 SCR 243**, one Full Bench judgment of this Court in **"Court on its own Motion(Lajja Devi) vs. State", 2012 (131) DRJ 225** and one Division Bench Judgment of this Court in **"Manish Singh vs. State Ors.", 126 (2006) DLT 28(DB).**

4. In all these cases the girls who had allegedly been kidnapped were minor on the date of kidnapping but were on the verge of attaining majority had claimed that they had gone with the accused on their own accord. The Supreme Court as well as this Court had

taken the view that offence of kidnapping is not made out against the person who is accused of kidnapping a minor girl if the girl is on the verge of attaining majority and had reached the age of discretion on the date of alleged kidnapping herself claims that she had gone with the accused on her own freewill and the accused had not induced her or played any fraud upon her. So, the accused in the above referred case before the Supreme Court, who was convicted by the trial Court and which conviction was upheld by the High Court also was acquitted by the Supreme Court. And in the two decisions of this Court(*supra*) even the FIRs were quashed.

5. My attention was drawn by the learned senior counsel for the petitioners to para no. 51 of Lajja Devi's judgment (*supra*) of this Court which is being reproduced below:

“51. If the girl is more than 16 years, and the girl makes a statement that she went with her consent and the statement and consent is without any force, coercion or undue influence, the statement could be accepted and Court will be within its power to quash the proceedings under Section 363 or 376 IPC. Here again no straight jacket formula can be applied. The Court has to be cautious, for the girl has right to get the marriage nullified under Section 3 of the PCM Act. Attending circumstances including the maturity and understanding of the girl, social background of girl, age of the girl and boy etc. have to be taken into consideration.”

6. My attention was also drawn to para no. 9 of Manish Singh's judgment(*supra*) of this Court which reads as under:

“9. In these circumstances, continuation of criminal proceedings arising out of FIR No. 217/03 under section 363 IPC Police Station Sarojini Nagar would be an exercise in futility. Besides, it would also be detrimental to the matrimonial life of the couple and of the infant. Lalita being around 17 years of age, on the verge of majority, having reached the age of discretion, had accompanied Prabhu of her own volition without any kind of enticement or inducement or force from any one. There was, thus, no taking away or enticing of a minor out of the keeping of a lawful guardian. Essential ingredients of the offence of kidnapping are missing. Reference may be made to S. Varadarajan v. State of Madras reported at 1965 Supreme Court 942 where the husband was held not guilty of kidnapping when the wife, a college going girl on the verge of majority had left the parental home of her own accord, to marry him, without any threat or inducement. This is a fit case for quashing of FIR in exercise of jurisdiction under Articles 226 and 227 of the Constitution. Accordingly, FIR No. 217/03 under Section 363 IPC P.S.Sarojini Nagar and all the consequential proceedings arising thereto are quashed.....”

7. The learned Additional Public Prosecutor while not disputing the fact that petitioner no.2 had claimed after her recovery from the custody of petitioner no.1-accused that she had gone with him on her own volition and not on his asking submitted that since admittedly she was below eighteen years of age though had attained the age of discretion and was on the verge of attaining majority on the day when she left her house and went with petitioner no.1 and married him also soon thereafter the petitioner no.1 was clearly guilty of the offence of kidnapping and case against him should not be quashed. In support of this submission he cited one judgment of

a two Judges Bench of the Hon'ble Supreme Court in **“Prakash vs State of Haryana”, AIR 2004 Supreme Court 227.**

8. Respondent no. 2, father of petitioner no. 2 as well as the complainant of this case, who was also present in Court at the time of hearing of this petition, had submitted that his only grievance was that the petitioner no. 1-accused was not expected to do such an act being the tutor of his minor daughter and he had betrayed his trust. He further submitted with a heavy heart that though now he cannot undo what his daughter had done by marrying the accused but the petitioner no.1 should have shown his maturity to tackle such a situation knowing that his pupil was a minor girl and the accused should have informed him about the relationship which was developing between them instead of alluring her to elope with him. Complainant's counsel also reiterated the same thing and expressed the same sentiments realising that complainant's daughter had not blamed the accused at all and that even during investigation she had not agreed to go with her parents after she had been recovered by the police and she was permitted by the Court to remain in the company of her accused-husband.

9. After giving my due consideration to all the aspects of the matter I have come to the conclusion that this petition deserves to be allowed. The judgments relied upon by the learned senior counsel for the petitioners apply on all fours to the facts of the present case. The petitioner no.2, who admittedly had reached the age of

discretion and was on the verge of attaining majority when she left her home and went with petitioner no.1, having not attributed any role to petitioner no.1 in her going with him and marrying him it cannot be said that petitioner no.1 had kidnapped her.

10. As far as the judgment of the Hon'ble Supreme Court cited by the learned Additional Public Prosecutor is concerned, the same is of no help to the prosecution as that was a case of kidnapping of a five years old girl and attempt to rape her and not a case where a girl on the verge of majority goes with someone on her own freewill and volition and marries also that person without any force or inducement.

11. This petition, therefore, succeeds. FIR no. 24/2011 registered against petitioner no. 1 on 12th February, 2011 at Police Station Neb Sarai as also the proceedings in respect of this FIR going on Court are quashed.

P.K. BHASIN, J

MARCH 6, 2013