

Court No. - 45

Case :- CRIMINAL MISC. WRIT PETITION No. - 10549 of 2023

Petitioner :- Smt. Renu Yadav And 2 Others

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Abhishek Kumar

Counsel for Respondent :- G.A., Shailesh Kumar Tiwari

Connected with

Case :- CRIMINAL MISC. WRIT PETITION No. - 13701 of 2023

Petitioner :- Smt Neetu Yadav And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Abhishek Kumar

Counsel for Respondent :- G.A.

Hon'ble Vivek Kumar Birla,J.

Hon'ble Vinod Diwakar,J.

1. Learned counsel for the petitioner has supplied a copy of the message sent on Whatsapp, which was duly received, to learned counsel appearing for the informant to the effect that the case shall be taken up in the first call. The same is taken on record.

2. No one is present on behalf of the informant.

3. Heard Sri Abhishek Kumar, learned counsel for the petitioners and Sri G.P. Singh, learned A.G.A. appearing for the State respondents.

4. Writ Petition No. 10549 of 2023 has been filed with the prayer to quash the First Information Report dated 19.6.2023 registered as Case Crime no. 213 of 2023, under Sections 366, 504, 506 IPC, P.S. Kotwali Mau, District Mau. Further prayer has been made not to arrest the petitioners in the aforesaid case.

5. Connected Writ Petition No. 13701 of 2023 has been filed with the prayer to quash the First Information Report dated 19.6.2023 registered as Case Crime no. 213 of 2023, under Sections 366, 504, 506 IPC, P.S. Kotwali Mau, District Mau. Further prayer has

been made not to arrest the petitioners in the aforesaid case.

6. On 20.9.2023 following order was passed:-

"1. Heard Sri Abhishek Kumar, learned counsel for the petitioners, Sri Shailesh Kumar Tiwari, learned counsel appearing for the informant and Sri Virendra Kumar Pal, learned A.G.A. appearing for the State respondents.

2. On 8.8.2023 following order was passed:-

"1. Heard Sri Abhishek Kumar, learned counsel for the petitioners, Sri Shailesh Kumar Tiwari, learned counsel appearing for the informant and Sri Virendra Kumar Pal, learned A.G.A. appearing for the State respondents.

2. Supplementary affidavit filed today supported by affidavit of the victim annexing therewith copy of the high-school certificate is taken on record. According to the high school certificate date of birth of the victim is 9.12.2003 and she is major.

3. This writ petition has been filed with the prayer to quash the First Information Report dated 19.6.2023 registered as Case Crime no. 213 of 2023, under Sections 366, 504, 506 IPC, P.S. Kotwali Mau, District Mau. Further prayer has been made not to arrest the petitioners in the aforesaid case.

4. It has been stated that the petition on behalf of the victim and the boy is under preparation and will shortly come up before the Court, therefore, in the meantime, in view of the fact that no offence under Section 366 IPC is made out, some protection may be granted to the petitioners.

5. Put up this case as fresh on 22.8.2023.

6. Till the next date of listing or till submission of police report under Section 173(2) Cr.P.C., whichever is earlier, the respondents are restrained from arresting the petitioners pursuant to the aforesaid FIR subject to cooperation in ongoing investigation."

3. Today, learned counsel for the petitioners that Criminal Misc. Writ Petition No. 13701 of 2023 (Smt. Neetu Yadav and another vs. State of U.P. and others) filed by the victim and the boy has been entertained by this Court and interim order has been granted on 19.9.2023.

4. All the parties agree that some date may be fixed in the next week along with record of Criminal Misc. Writ Petition No. 13701 of 2023 (Smt. Neetu Yadav and others vs. State of U.P. and others).

5. Put up this case as fresh on 27.9.2023 along with record of Criminal Misc. Writ Petition No. 13701 of 2023 (Smt. Neetu Yadav and another vs. State of U.P. and others).

6. Interim order, if any, is extended till the next date of listing."

7. It is submitted that as per high-school certificate, the date of birth of petitioner no. 1-Neetu is 9.12.2003 and date of birth of petitioner no. 2 is 1.1.2003 and as such, the petitioners no. 1 and 2 are major and they have married on their sweet will and no offence has been committed. Reliance has been placed on a judgement and order dated 5.12.2022 passed by this Court in **Criminal Misc. Writ Petition No. 17046 of 2022 (Smt. Juli Kumari and another vs. State of UP and 2 others)** to submit that under identical circumstances the petition was allowed and FIR therein was quashed.

8. The aforesaid order dated 5.12.2022 passed in **Criminal Misc. Writ Petition No. 17046 of 2022 (Smt. Juli Kumari and another vs. State of UP and 2 others)** is quoted as under:

"Heard learned counsel for the petitioners and learned AGA.

Present writ petition has been preferred for quashing the FIR dated 25.10.2022 being Case Crime No.0475 of 2022 under Section 366 IPC, P.S. Saurikh, Distt. Kannauj and for a direction to respondents not to arrest the petitioners pursuant to aforesaid FIR.

Placing reliance on the Aadhar Card of the victim girl showing her date of birth as 1.1.2004, it is submitted by the learned counsel for the petitioners that the petitioner no.1 is a major girl aged about more than 18 years on the date of incident.

The present petition has been filed with the declaration, jointly by both the petitioners no.1 & 2 that the petitioner no.1 had left her paternal home out of her own sweet will and being a major girl, she is free to take her choice to perform marriage with the petitioner no.2.

The present petition, however, has been filed on the assertion that no offence under Section 366 IPC is made out as the petitioner no.1 is a major girl. The entire criminal case lodged by the respondent no.3 is nothing but an abuse of the process of the law.

Learned counsel for the petitioners has further contended that in view of the aforesaid facts and circumstances, the impugned FIR is liable to be quashed in view of the Supreme Court's judgment in Kavita Chandrakant Lakhani vs. State of Maharashtra & Anr reported in AIR 2018 SC 2099, wherein it was held that to constitute an offence under Section 366 IPC, it is necessary for the prosecution to prove that the accused induced the complainant woman or compelled by force to go from any place, that such inducement was by deceitful means, that such abduction took place with the intent that the complainant may be seduced to illicit intercourse and/or that the accused knew it to be likely that

the complainant may be seduced to illicit intercourse as a result of her abduction. Mere abduction does not bring an accused under the ambit of this

penal section. So far as charge under Section 366 IPC is concerned, mere finding that a woman was abducted is not enough, it must further be proved that the accused abducted the woman with the intent that she may be compelled, or knowing it to be likely that she will be compelled to marry any person or in order that she may be forced or seduced to illicit intercourse or knowing it to be likely that she will be forced or seduced to illicit intercourse. Unless the prosecution proves that the abduction is for the purposes mentioned in Section 366 IPC, the Court cannot hold the accused guilty and punish him under Section 366 IPC.

As regards the age of the victim girl, as indicated in the Aadhar Card appended as Annexure No.2 to the writ petition, no dispute has been raised by learned AGA. It is, thus, clear that both the petitioners are major. The fact that the present writ petition has been filed with the declaration by the victim girl and that she is living voluntarily in the company of the petitioner no.2, is supported with the signature of the victim girl on the Vakalatnama. Once the age of the victim girl is not in dispute, the petitioners no.1 & 2 cannot be made accused for committing offence under Section 366 IPC as victim had left her home in order to live with the petitioner no.2.

We make it clear that the question in the present petition is not about the validity of marriage of two individuals i.e. petitioners no.1 & 2. Rather, the issue is about the life and liberty of two individuals in choosing a partner or their right to freedom of choice as to with whom they would like to live.

In view of the above discussion, we are of the considered view that from the first information report no offence under Section 366 IPC is made out, inasmuch as, both the petitioners are major and the petitioner no.1 has come up with the categorical stand that she had left her home with the petitioner no.2 willingly and is living with him as a married woman.

In view of the above, the writ petition succeeds and is allowed. The FIR dated 25.10.2022 being Case Crime No.0475 of 2022 under Section 366 IPC, P.S. Saurikh, Distt. Kannauj as well as all consequential proceedings are hereby quashed.

We, however, clarify that while deciding the present petition, we have not looked into the validity of marriage of the petitioners."

9. Per contra, learned AGA though has opposed the petition, however, could not dispute the aforesaid fact.

10. In view of the above discussion, we are of the considered view that from the first information report no offence under Section 366 IPC is made out, inasmuch as, the petitioners no. 1 and 2 are major and the petitioner no. 1 has come up with the categorical stand that she had left her home with the petitioner no. 2 willingly and is living with him as a married woman.

11. In view of the above, the writ petition succeeds and is allowed. The FIR dated 19.6.2023 registered as Case Crime no. 213 of

2023, under Sections 366, 504, 506 IPC, P.S. Kotwali Mau, District Mau as well as all consequential proceedings are hereby quashed.

12. We, however, clarify that while deciding the present petition, we have not looked into the validity of marriage of the petitioners.

13. Since this order has been passed in absence of respondent no. 4, he shall be at liberty to file a recall application for recalling of this order within six weeks.

Order Date :- 16.10.2023

Lalit Shukla