

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-No. 37251 of 2014(O&M)

Date of decision: September 16, 2015

Guddu

----Petitioner(s)

V/s

State of Haryana and others

-----Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Dalip Kumar Tuteja, Advocate for the petitioner.

Mr. Vikas Chopra, Deputy Advocate General, Haryana.

HARI PAL VERMA, J. (Oral)

Prayer made in the present petition filed under Section 482 Cr.P.C. is for quashing of FIR No. 186, dated 04.07.2014 under Sections 363, 366A, 376, 506 IPC, 4/8 POSCO Act and Section 3 of SC & ST Act, registered at Police Station Shivaji Colony, Rohtak and the subsequent proceedings arising out of the above said FIR, pending in the Court of Addl. Sessions Judge, Rohtak.

The FIR-in-question was registered on the basis of statement made by respondent No.2, namely, Vidya wife of Rakesh resident of Bhawanipur, Distt. Gorakhpur Police Station Gola Bazaar, Uttar Pradesh, presently residing on rent near Balti Shri Ram Nagar Colony, Rohtak, Haryana.

The contents of FIR reads as under:-

“To, The SHO sahib, Police Station Shivaji Colony, Rohtak. Sir, it is respectfully prayed that I, Vidya w/o Rakesh r/o Bhavanipur, District Gourakhpur, Police Station Gola Bazar, U.P., now am on rent near Balti Factory, Shri Ram Nagar Colony, Rohtak and I am a labouror. I have 5 children out of which 2 are girls and 3 are boys. My daughter Gudia aged 13 years who is a student of 8th Class. I, along with my family live on rent in the house of Sheelu in Shri Ram Colony. In that house, Bansi along with his children also live on rent. Yesterday, on 3.7.2014, myself and my son had gone for labour work. When at about 4 p.m., when I came back to my house, my daughter Gudia was not present in the house and Guddu son of Bansi Lal caste Punjabi, r/o Shri Ram Colony, Rohtak was already having an evil eye on my daughter who was not found in the house. I am sure that my daughter Guddi has been enticed away by Guddu with the intention to marry her. Till now, my self and my husband had been searching for my daughter who is not found. Action be taken against Guddu and my daughter Guddi be got traced. Dated 4.7.2014, RTI Vidya w/o Rakesh r/o Bhavanipur, District Gourakhpur, presently Shri Ram Colony, Rohtak-9896559536.”

Learned counsel for the petitioner contends that petitioner, namely, Guddu son of Bansi Lal, got married with respondent No.3, namely, Gudia daughter of Rakesh on 03.02.2014. He further submits that since the marriage was against the wishes of respondent No.2 i.e. Vidya (mother of Gudia) and her husband-Rakesh, the aforesaid FIR was lodged. There is no dispute between petitioner and respondent No.3 and matrimonial bond between petitioner and respondent No.3 resulted into pregnancy of respondent No.3. Respondent No.2 Viday (mother of Gudia) as well as relatives of the petitioner and respondent No.3, respondent No.2 has come forward to get the FIR registered against the petitioner. Respondent No.2 and her husband knew the factum of

pregnancy of respondent No.3 from the petitioner. Even, at the time of the registration of the FIR, respondent No.3 had also carrying pregnancy of about 17 to 18 weeks, as is clear from the report of Antenatal Ultrasound Sonography conducted by Radiologist of General Hospital, Rohtak on 07.07.2014. Moreover, out of this pregnancy, a child was born on 03.12.2014, who unfortunately expired.

Learned counsel for the petitioner further submits that respondent No.3 has made a statement under Section 164 (Cr.P.C.) on 07.07.2014 before the Judicial Magistrate Ist Class, Rohtak, which reads as under:-

“In the Court of Sh. Amandeep, Judicial Magistrate Ist Class, Rohtak.

Statement u/s 164 Cr.P.C.

FIR No. 186

U/S 363, 366A, 376, 506 IPC & 4, 8 POSCO ACT

P.S. Shivaji Colony, Rohtak

Statement of Gudiya d/o Rakesh aged 13/14 years r/o Gorakhpur, U.P. at present Sunariya Chowk, Rohtak.

Q. What do you want to say?

Ans. I am to live with only Guddu s/o Bansi Lal, R/o Sunariya Chowk. I have been married to him. I want to keep the child.

Q. What do you want to say anything else.

Ans. No

RO & AC

Identified

SD

Sd/-Gudiya

Vidyavati ASI

Amandeep

JMIC Rohtak

4:35 PM

07.07.2014”

Learned counsel for the petitioner also submits that apart from the fact that there is no allegation invoking Section 376 IPC,

respondent No.3 has appeared before learned Magistrate on 29.08.2014 and has made the following statement:-

Statement of Gudia d/o Rakesh, Class 8th r/o Siri Ram Colony Rohtak. On SA

“Stated that I do not want to go to my parents and I also do not want to go to Nari Niketan. I be sent to somewhere else. I am not being cared properly. The parents have no care for me. I be sent in the house of the boy.

*RO & AC
Sd/- Gudia*

*Manjeep Pal,
D/JMIC, Rohtak
3 p.m. 29.08.2014”*

He also submits that respondent No.3 has not levelled any allegation against the petitioner and at every point of time, she deposed that she is ready with stay of the petitioner. During the pendency of the present petition, the parties have compromised the matter and in support thereof, the parties have sworn a joint joint affidavit to contend that the marriage of the petitioner with respondent No.3-Gudia was solemnized in accordance with Hindu Rites and Ceremonies on 03.02.2014 at Mandir Khatu Shyam, Sikar, Rajasthan and out of wedlock, a son was born. However, the said son expired on the 5th day of his birth and now again respondent No.3-Gudia is pregnant from the from the petitioner-Guddu. Furthermore, the petitioner and respondent No3 are residing as husband and wife happily in their matrimonial home and Jyoti, who is the mother of the petitioner is also accepting respondent No.3. The complainant has stated that she has no grievance against the petitioner. Respondent No.3 is now again pregnant and carrying fetus about 16 to 17 weeks.

The joint affidavit so furnished by the parties is taken on record.

The parties, namely, Guddu Son of Bansi Lal along with his mother, namely Jyoti, Gudia wife of Guddu and her mother Vidya wife of Rakesh are present in Court today and they are duly identified by learned counsel for the petitioner. Learned counsel also submits that respondent No.3 is major, as she was born on 15.08.1996 and, therefore, competent to furnish an affidavit or to make a statement.

On the other hand, learned State counsel, on instructions from, ASI-Jasmer Singh, states that even if the parties have entered into a compromise, but the date of the birth of respondent No.3-Gudia is 15.08.1998 and, therefore, she is minor and not competent to furnish an affidavit for entering into any compromise.

However, this Court has the occasion to look into the photocopy of Annexure P-5 i.e page No. 41 of Panchayat Parivar Register maintained by Village Development Officer, Neyai Panchayat, Village: Bhawanipur, Tehsil Gola, Gorakhpur and as per the photocopy of the same, as furnished by the State counsel in the Court today, the date of birth of respondent No.3-Gudia is 15.08.1996, but it has been over-written as 15.08.1998. The photocopy of the said document is retained and the same is taken on record.

In the case of **Ravindra Vs. State of Madhya Pradesh 2015 (2) R.C.R. (criminal) 124,** while relying upon the judgment of Hon'ble Supreme Court in **Baldev Singh & Ors Vs. State of Punjab, 2011(2) R.C.R. (Criminal) 127**, has invoked the proviso to Section 376(2) (g) of IPC on the consideration that since the case was an old one and there

was a compromise between the parties, has reduced the sentence for the period already undergone by the appellant.

This Court is conscious of the judgment in the case of *State of M.P. Versus Madanlal, 2015(3) R.C.R. (Criminal) 537*, wherein the Apex Court has held that the offence under Section 376(2) (f), are not compoundable, as such crimes are against the body of a woman which is her own temple.

In the case of *Madan Lal's case (supra)*, the matter before the Apex Court was that the conviction of the accused has already taken place and victim was of 07 years of age. However, the facts of the present case are quite different to that of *Madan Lal' case (supra)*. In the case in hand, the petitioner and respondent No.3 solemnized their marriage on 03.02.2014 and, thereafter, respondent No.3 became pregnant from the petitioner and delivered a child on 03.12.2014, who unfortunately expired on the 5th day of birth and in the FIR, respondent No.3 has made a statement under Section 164 (Cr.P.C.) before the Magistrate wherein she showed her consistent willing to stay with the petitioner-husband. The bare perusal of contents of the FIR, reveals that there is no allegation against the petitioner invoking Section 376 IPC. Furthermore, the date of birth of respondent No.3 has been taken into consideration as 15.08.1998 whereas when this Court has the occasion to look into the photocopy from the police file, it is noticed that there is over writing on the date of birth of respondent No.3-Gudia instead of 15.08.1996, as it has been over-written as 15.08.1998, which shows that respondent No.3 is not minor.

Even, otherwise there is no reasonable likelihood of the accused to be convicted for the offence for the reason that the complainant has compromised the matter with the accused and she is not likely to support the prosecution and from the other facts and circumstances available on record. Therefore, considering the case of **Bhupinder Kaur Vs. State of Punjab and another, 2004(2) RCR (Criminal) 443**, it would not be in the interest of justice to decline the prayer for quashing of the FIR on the ground that it would amount to be permitting the parties to compound non-compoundable offence. Rather, in the facts and circumstances of the case, specifically when the accused and the complainant have married, it would in the interest of the parties to lead peaceful and harmonious life and, therefore according to the case of **Bhupinder Kaur's case(supra)**, the FIR is deserves to be quashed. Moreover, in the case is hand, the police has submitted the challan and after the framing of the charge the trial is at the initial stage. In the circumstances, when the prosecution is not going to support the prosecution version, the trial is not going to lead any conviction.

In view of the above, taking into consideration the peculiar facts and circumstances of the case, especially the fact that the parties have entered into compromise coupled with the fact that respondent No.3-Gudia is again pregnant from the petitioner and carrying a fetus of about 16 to 17 weeks and the petitioner/accused and respondent No.3/victim are living together as husband and wife, the chances of their conviction being very bleak, the present petition is allowed and FIR No.186, dated 04.07.2014 under Sections 363, 366A, 376, 506 IPC, 4/8 POSCO Act and Section 3 of SC & ST Act, registered at Police Station

Shivaji Colony, Rohtak and the subsequent proceedings arising out of the above said FIR, is hereby quashed.

September 16, 2015
Anjal

(HARI PAL VERMA)
JUDGE