

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.M-41679 of 2014

Date of decision: November 02, 2015

Sukhraj Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.G.S.Simble, Advocate
for the petitioners.

Mr.B.S.Bhullar, Asstt. Advocate General, Punjab
for the respondent-State.

Mr.Vishal Munjal, Advocate
for respondent No.2.

Mr.Rahul Sharma, Advocate for
Mr.S.S.Tiwana, Advocate
for respondent No.3.

INDERJIT SINGH, J.

Petitioners have filed this petition under Section 482 Cr.P.C. for quashing of FIR No.129 dated 08.09.2014 under Sections 363, 366-A, 506 and 120-B IPC registered at Police Station Division No.2, Pathankot, District Pathankot and all other consequential proceedings arising therefrom.

It is mainly stated in the petition that petitioner No.1 Sukhraj Singh and respondent No.3 Sarabjit Kaur were known to each other and they have solemnized marriage on 16.09.2014 against the

wishes of relatives and parents of respondent No.3 and respondent No.2 got registered the above-said FIR No.129 dated 08.09.2014 against the petitioners. As it was an inter-caste marriage and against wishes of the relatives and parents, therefore, petitioner No.1 Sukhraj Singh and respondent No.3 Sarabjit Kaur filed a petition i.e. CRM No.M-32903 of 2014, which was disposed of by this Court on 26.09.2014, a copy of which is Annexure P-2. It is also stated in the petition that petitioner No.1 and respondent No.3 are living happily together as husband and wife with the family of petitioner No.1 and respondent No.3 has no objection if this Court quashes the above-said FIR.

Notice of motion was issued and learned counsel for respondents No.2 as well as learned State counsel appeared and contested the petition and also filed reply. Learned counsel for respondent No.3 appeared and filed short reply.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

The perusal of the record shows that FIR has been registered by respondent No.2, father of respondent No.3. Annexure P-2 shows that petitioner No.1 and respondent No.3 filed a petition for protection, which was disposed of with the direction to the official respondents to take necessary steps to protect the lives and liberty of the petitioners. Annexure P-3 is the affidavit of respondent No.3 Sarabjit Kaur having no objection in quashing the FIR. In the short reply filed by respondent No.2 Jagir Singh, it is admitted that petitioner

No.1 Sukhraj Singh and respondent No.3 Sarabjit Kaur have already performed the marriage. The only objection is that boy was less than of 21 years at that time.

Learned counsel for the petitioners cited judgment passed by the Hon'ble Delhi High Court in ***Manish Singh vs. State Govt. of NCT and others, 2006(1) RCR (Criminal) 653***, in which it is held that if a girl of 17 years accompanied the boy of her own volition and enticement and marrying him, then offence of kidnapping is not made out. A girl of 17 years is on the verge of majority and reached the age of discretion. It is also held in that case that child marriage is not void or voidable. Marriages solemnized in contravention of the age prescribed under Section 5(iii) of the Hindu Marriage Act i.e. 21 years for male and 18 years for female were neither void nor voidable under Sections 11 and 12 of the Hindu Marriage Act. Such under age marriages were only punishable under Section 18 of the Hindu Marriage Act with imprisonment of 15 days and a fine of ₹1000/- as also under the provisions of Child Marriage Restraint Act.

Learned counsel for the petitioners further cited judgment passed by this Court in ***Anjali Aggarwal and another vs. State of Haryana, 2011(2) RCR (Criminal) 228***, in which it is held that prosecutrix and accused had an affair and both married during the subsistence of first marriage of accused. It is further held that girl married out of her own free will merely that accused entered into second marriage during subsistence of first marriage, offence of rape and abduction not made out.

I have gone through both the above-cited judgments and the same fully apply in the present case.

Keeping in view the facts and circumstances of the present case, I find that offence of kidnapping or abduction is not made out. The girl was not minor at that time of registration of FIR nor the girl is alleging her kidnapping or abduction. Rather, she is happily living with petitioner No.1 and his family and has no objection if the FIR is quashed.

In view of the above discussion, I find merit in the present petition and the same is allowed. Accordingly, FIR No.129 dated 08.09.2014 under Sections 363, 366-A, 506 and 120-B IPC registered at Police Station Division No.2, Pathankot, District Pathankot and all the subsequent proceedings arising therefrom are hereby quashed

November 02, 2015
Vgulati

(INDERJIT SINGH)
JUDGE