

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-42590 of 2014.
Decided on:-August 25, 2015.

Avtar Singh and othersPetitioners.

Versus

State of Punjab and anotherRespondents.

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. Krishan Sehajpal, Advocate
for the petitioners.

Mr. Sultan Singh Gill, DAG, Punjab
for respondent No.1-State.

None for respondent No.2.

HARI PAL VERMA, J.

Petitioners, namely, Avtar Singh, Baljit Kaur and Paramjit Singh have filed the present petition for quashing of FIR No.221 dated 27.8.2014 under Sections 363, 366-A, 120-B IPC, registered at Police Station, Tanda, District Hoshiarpur.

The FIR was registered on the complaint of respondent No.2 Subhash Chawla @ Subhash Chander son of Inderjit Chawla. It has been

alleged therein that he has two sons and a daughter. His elder son Gagan Chawla has gone abroad whereas younger son Jehan Chawla is studying at Mukerian, and his daughter Jyoti Bala is preparing for examination for the class 10+2. Her date of birth is 8.11.1996. On 21.8.2014, his daughter Jyoti Bala had gone for tuition at 4.30 p.m. in Ahiyapur Mohalla and when his wife Kavita Rani had gone to bring her daughter from tuition, she was informed by the tuition master that Jyoti Bala did not come to him for study. When this fact was brought to the knowledge of the petitioner, he came back from his shop to search his daughter, but could not find her. Accordingly, the matter was reported to the police on 23.8.2014 about his missing daughter.

On notice of motion having been issued by this Court, the reply by way of affidavit of Karanveer Singh, PPS, DSP, Sub-Division, Tanda, District Hoshiarpur has been filed on behalf of respondent No.1-State.

As reported by the office, notice issued to respondent No.2 received back unserved with the report that respondent No.2 has expelled his daughter from his property. Thus it tantamount refusal from service and therefore, it is deemed service. However, no one has put in appearance on behalf of respondent No.2 to pursue the case. The contents of the present petition have not thus been controverted by the respondent No.2.

Learned counsel for the petitioners has contended that the allegations in the FIR are false. The petitioner No.1 and Jyoti Bala i.e. the daughter of respondent No.2 are major and have solemnized their marriage

and are living happily. The petitioner No.1 and Jyoti Bala (daughter of respondent No.2) have solemnized their marriage without any threat or coercion and the registration of the present FIR is nothing but an attempt to mount pressure on the petitioners to hand over the custody of Jyoti Bala to her parents, whereas Jyoti Bala is not willing to return back to her parental home. She is residing with the petitioner No.1 and living a happy married life. Similarly, no offence has been committed by petitioners No.2 and 3 as the petitioner No.2 is sister of petitioner No.1 and petitioner No.3 is brother-in-law (Jija) of the petitioner No.1.

Learned counsel for the State, on instructions of ASI Madan Mohan, has contended that the petitioner No.1 and Jyoti Bala got recorded their statements with the police of Police Station, Bullowal that they have married each other with their free consent and they are living happily as husband and wife. Jyoti Bala has no complaint against the petitioners.

I have heard learned counsel for the parties.

The Hon'ble Delhi High Court in ***Criminal Miscellaneous No.3107 of 2012*** decided on 5th February, 2013 titled as ***Rahul Verma Versus State and another***, somewhat in similar circumstances, has held as under:

“4. Section 5(iii) of Hindu Marriage Act, 1955 and Section 2(a) of Prohibition of Child Marriage Act, 2006 (PCM Act) prohibits marriage of a girl less than 18 years of age. At the same time, Section 3 of Prohibition of Child Marriage Act,

2006 states such a marriage is not declared to be void and has been made only voidable at the instance of the person who was below the marriageable age at the time of marriage. In S. Varadarajan v. State of Madras, AIR 1965 SC 942, a girl below 18 years had asked her boyfriend (the accused) to come to a particular place and the accused had agreed to accompany the girl. The Supreme Court held that where a minor leaves her father's protection knowing and having capacity to know the full import of what she is doing voluntarily joins the accused, the accused cannot be said to have taken her away from the keeping of her lawful guardian. Para 9 of the report is extracted hereunder:

“9. It must, however, be borne in mind that there is a distinction between "taking" and allowing a minor to accompany a person. The two expressions are not synonymous though we would like to guard ourselves from laying down that in no conceivable circumstances can the two be regarded as meaning the same thing for the purposes of Section 361 of the Indian Penal Code. We would limit ourselves to a case like the present where the minor alleged to have been taken by the accused person left her father's protection knowing and having capacity to know the full import of what she was doing voluntarily joins the accused person. In such a case we do not think that the accused can be said to have taken her away from the keeping of her lawful guardian. Something more has to be shown in a case of this kind and that is some kind of inducement held out by the accused person or an active participation by him in the formation of the intention of the minor to leave the house of the guardian.”

Similarly, in ***Bholu Khan Versus State of NCT of Delhi and others (W.P. (CrI)1442/2012) decided on 01.02.2013***, a Division Bench of the Hon'ble Delhi High Court has held that if the girl is more than 16 years and voluntarily and of her own will accompanies a person the proceedings under Section 363 or 376 IPC can be quashed. Para 51 of the report is extracted hereunder:

"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."

Considering the fact that the respondent No.2 has not opted to contest the present petition and no material has been placed on record by the learned counsel for the State to show that Jyoti Bala is staying with the petitioner No.1 under any pressure, this Court feels that the FIR in question is nothing but an abuse of process of law and, therefore, the same is liable to be quashed.

Accordingly, the present petition is allowed and FIR No.221

dated 27.8.2014 under Sections 363, 366-A, 120-B IPC, registered at Police Station, Tanda, District Hoshiarpur and all subsequent proceedings arising therefrom is quashed.

August 25, 2015
'Yag Dutt'

(HARI PAL VERMA)
JUDGE