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

Judgment delivered on: 9th July, 2015

+ **CRL.M.C. 463/2015**

ANKIT TYAGI

..... Petitioner

Represented by: Mr. Sushil Kumar Singh,
Advocate.

Versus

STATE (NCT OF DELHI) & ORS.

..... Respondents

Represented by: Mr. M.N. Dudeja,
Additional Public Prosecutor for the State
with Investigating Officer.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. This is a Petition under Section 482 of the Code of Criminal Procedure, 1973, preferred by the petitioner for quashing of FIR No. 32/2015 registered at Police Station Swaroop Nagar for the offence punishable under Section 363 IPC and consequential proceedings arising out of the same.

2. The aforesaid FIR was registered on the complaint dated 16.01.2015 lodged by the father (respondent No.2) of the prosecutrix (respondent No.3) alleging kidnapping of the prosecutrix by the petitioner from his lawful guardianship, at that time she was aged only

17 years and six months and had married her without the consent of her parents.

3. By virtue of this petition, the petitioner prays for quashing of the FIR and the proceedings emanating from the same on the ground that the petitioner and the respondent No.3 were friends and were having an affair. Their family members were against the marriage. Therefore, the petitioner and the respondent No.3 left their respective houses, resulting in registration of the FIR in question. It is stated that on 16.12.2014, marriage between the petitioner and the respondent No.3 was solemnized at Arya Samaj Mandir as per Hindu Rites and thereafter they started living together as husband and wife.

4. Learned counsel for the petitioner further submits that though the respondent No.3 was less than 18 years of age at the time of the incident, despite, the case should not have been lodged by the Police against the petitioner in view of judgment passed by the Full Bench of this Court in case ***Courts On Its Own Motion (Lajja Devi) Vs. State 2012 VI AD, Delhi 465***, whereby held as under:

“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.”

5. On the other hand, learned Additional Public Prosecutor appearing on behalf of the State submits that FIR in question was registered against the petitioner as on the date of kidnapping of the respondent No.3, she was 17 years and six months of age. She further submits that thereafter petitioner and respondent No. 3 have entered into a marriage on 16.12.2014 and are living together as husband and wife, therefore, no useful purpose will be served in continuing the proceedings. Thus, the State has no objection if the present petition is allowed.

6. Respondent No.3 is personally present in the Court and has been identified by the concerned Investigating Officer. She stated that she had voluntarily accompanied the petitioner and had married him of her own free will. She submits that since her parents were not happy with this marriage, therefore, she decided to leave her house and started living separately with the petitioner as his wife and is happily residing with the petitioner. The respondent No.3 submits that after the marriage, her parents should not have any objection; however, a complaint was made by her father, which was culminated into FIR mentioned above. Therefore, respondent No.3 has prayed that to restore cordiality amongst the parties, proceedings arising out of FIR in question be brought to an end.

7. Section 5(iii) of Hindu Marriage Act, 1955 and Section 2(a) of the Prohibition of Child Marriage Act, 2006, prohibits marriage of a

girl less than 18 years of age. At the same time, Section 3 of the 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.

8. In *S. Varadarajan Vs. State of Madras, AIR 1965 SC 942*, the Supreme Court observed that 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. It was 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. The relevant observations of the Apex Court are as under:-

"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."

9. A three Judge Bench decision of the Supreme Court in '**Gian Singh Vs. State of Punjab**' (2012) 10 SCC 303, reiterated the principles that the High Court has inherent power to quash FIR or complaint in non- compoundable cases (1) to secure ends of justice or (2) to prevent abuse of process of any Court. The Supreme Court held that, however, such power must be exercised with due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victims family and the offender have settled the dispute.

10. In the case bearing W.P.(Crl.) No.1442/2012, titled as '**Bholu Khan Vs. State of NCT of Delhi & Ors,**' decided on 01.02.2013, a Division Bench of this Court 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.

11. Since the prosecutrix has lawfully married of her own free will, the petitioner cannot be blamed of kidnapping her. Relying upon the judgment of the Supreme Court in **S. Varadarajan's** case (*supra*), no offence under Section 363 IPC is made out against the petitioner. There does not seem to be any conspiracy in the alleged kidnapping of the prosecutrix in view of peculiar facts and circumstances of this case mentioned hereinabove.

12. Keeping in view the law discussed above and the statements of the learned Additional Public Prosecutor for the State and respondent No.3, in my considered opinion, it is a fit case where power under Section 482 of the Code of Criminal Procedure, 1973, can be exercised as continuation of the FIR and the proceedings emanating therefrom in question shall be abuse of the process of the law. Moreover, it would be in the interest of justice and to avoid harassment to the petitioner and the respondent No.3, who have already married and are living happily as husband and wife, if the proceedings are quashed.

13. Consequently, FIR No. 32/2015 registered at PS-Swaroop Nagar for the offence punishable under Section 363 IPC with emanating proceedings thereto, if any, is hereby quashed qua the petitioner.

14. In view of the above, the petition is allowed with no order as to costs.

15. A copy of this order be given *dasti* to the learned counsel for the parties.

**SURESH KAIT
(JUDGE)**

JULY 09, 2015
jg/sb