

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

Date of Decision: January 19, 2015

+ CRL.M.C. 2238/2013 & CrI. M.A.No. 8689/2013

SURAJ & ANR. Petitioners

Through: Mr. D.K. Singh, Advocate with
petitioners in person

versus

STATE NCT OF DELHI & ANR. Respondents

Through: Mr. Parvin Bhati, Additional
Public Prosecutor for respondent
No.1-State with SI Sunil Sharma

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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Quashing of FIR No. 299/2009, under Sections 363/366 of the IPC, registered at police station Nand Nagri, Delhi is sought while relying upon statement of petitioner No.2, who is the prosecutrix of this FIR, recorded under Section 164 of the Cr.P.C. before the trial court as also her affidavit placed on record in support of this petition. Respondent No.2, who is father of petitioner No.2, is the first-informant of FIR in question.

Learned Additional Public Prosecutor for respondent-State submits

that petitioner No.1 is the accused and petitioner No.2 is the prosecutrix and they have been identified to be so by SI Sunil Sharma, Investigating Officer of this case. Learned Additional Public Prosecutor for respondent-State draws attention of this Court to the Ossification Report (*Annexure-D*) on record to show that at the time of recording of statement of the prosecutrix under Section 164 of the Cr.P.C., she was 18 years of age. Learned Additional Public Prosecutor for respondent-State submits on instructions that respondent No.2, who is father of prosecutrix and first-informant of FIR in question, is not found available on the given address.

Petitioner No.2/prosecutrix submits that she had voluntarily accompanied petitioner No.1-accused and had married him and out of this wedlock, a child has born, who is now aged two years. Petitioner No.2/prosecutrix submits that she is happily residing with petitioner No.1-husband and to restore cordiality amongst the parties, proceedings arising out of FIR in question be brought to an end. It is submitted by petitioner No.2/prosecutrix that whereabouts of her father, who is complainant/ first-informant of FIR in question, are not known to her.

A Full-Bench of this Court in *Court on Its Own Motion (Lajja Devi) & Ors. v. State* 2012 (3) JCC 148, has authoritatively held as under:-

"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."

In 'Gian Singh Vs. State of Punjab' (2012) 10 SCC 303 Apex Court has recognized the need of amicable resolution of disputes in cases like the instant one, by observing as under:-

"61. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceedings or continuation of criminal proceedings would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceedings."

Applying the dictum of afore-noted decisions to the facts of this case, I find that continuance of proceedings arising out of the FIR in question would be an exercise in futility in view of the fact that petitioner No.2-prosecutrix is happily residing with petitioner No.1-husband and a child has been born out of this wedlock.

Accordingly, this petition is allowed and FIR No. 299/2009, under Sections 363/366 of the IPC, registered at police station Nand Nagri, Delhi and proceedings emanating therefrom are quashed to restore cordiality amongst the parties.

This petition and application are accordingly disposed of.

(SUNIL GAUR)
JUDGE

JANUARY 19, 2015

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