

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

% Order delivered on: 13th April, 2015

+ **CRL.M.C. No.1431/2015**

MOHD SADDIK @ SURAJ Petitioner
Through: Mr. Tushar Thareja and
Mr. Amritansh Batheja, Advocates

versus

STATE GOVT OF NCT OF DELHI (NCT) & ANR Respondents
Through: Mr. M.P. Singh, APP for the State
Respondent No.2 in person.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The present petition has been filed by the petitioner under Section 482 Cr.P.C. for quashing of FIR No.40/2009, under Sections 363/368 IPC, registered at P.S. Prasad Nagar, Delhi on the basis of settlement arrived at between the parties. The complaint was filed by Smt. Geeta, respondent no. 2 who is present in the court and she has no objection if the FIR in question is quashed.
2. The brief facts of the case are that on 14th January, 2009 complaint was filed for missing of Meenu @ Monica by respondent no. 2. On the basis of the said complaint made by respondent No.2, the aforesaid FIR was registered against the petitioner. It came to the

knowledge of the respondent no. 2 that on 19th February, 2009 Meenu @ Monica married the petitioner i.e. Mohd. Saddik @ Suraj. The petitioner is in judicial custody.

3. I have been informed by the complainant as well as by Meenu @ Monica who is present before the Court that out of the wedlock a male child, namely, Rahul was born on 12th September, 2009. Admittedly, the petitioner was taken into custody in pursuance of the said proceedings initiated against the petitioner under Section 82 Cr.P.C.

4. Learned counsel appearing on behalf of the petitioner in support of his submissions has referred the decision of the Supreme Court on similar circumstances in the case of Tabbassum Jahan & Anr. vs. State of Uttarakhand & Ors., being Criminal Appeal No.1275 of 2010, passed on 18th March, 2015 which reads as under:

“The appellants Tabbassum Jahan and Imran Chaudhari married on 07.12.2009 at Haldwani in District Nainital (Uttarakhand). It is the case of the appellants that consequent upon their marriage, the “nikhanama” (certification of marriage) was issued, and as such, their marriage had the sanction of law.

Respondent No.3 – Mohd.Ali Saifi, the father of appellant No.1, lodged an First Information Report, bearing No.645/2009 at Police Station Kashipur, District Udham Singh Nagar. It was the assertion of respondent No.3 (in the complaint), that his daughter was a minor on the date of her marriage, and that, she had been kidnapped by appellant No.2 forcibly on 07.12.2009. Insofar as the “nikahnama” is concerned, the veracity of the same was contested, on account of the fact that it could not be accepted as legally valid, without the express consent of

respondent No.3, as Tabbassum Jahan was a minor, when she entered into the above-mentioned matrimonial alliance.

The appellants before this Court approached the High Court of Uttarakhand at Nainital (hereinafter referred to as 'the High Court') by filing a Writ Petition (Criminal) No.1104 of 2009 wherein they sought quashing of the above First Information Report. Having taken into consideration the factual position presented before it, the High Court did not find any justification to quash the above-mentioned First Information Report. Appellant No.2 - Imran Chaudhari i.e. the husband of appellant No.1, was accordingly required to surrender before the trial court, and face trial. Liberty was however granted to appellant No.2, to file a bail application consequent upon his surrender before the trial court.

The aforesaid order dated 18.12.2009 passed by the High Court, is a subject matter of challenge, at the hands of wife and husband mentioned hereinabove.

When the special leave petition came to be listed before this Court for the first time on 14.01.2010, the detention/arrest of the petitioner in connection with Kashipur PS Case No.645 of 2009 dated 13.12.2009 under Section 364 of the I.P.C. was ordered to be stayed. Subsequently, on 16.07.2010, leave was granted and the interim order was directed to continue.

Appellant No.1 - Tabbassum Jahan and appellant No.2 – Imran Chaudhari are present in Court in person. Appellant No.1 has been identified by the learned counsel representing the appellants.

Appellant No.1 has also identified respondent No.3 - Mohd.Ali Saifi. Both of them affirm the factual position of their marriage, as has been disclosed in the foregoing paragraphs. During the course of hearing, respondent No.3 - Mohd.Ali Saifi affirmed, that consequent upon the matrimonial alliance between appellant Nos.1 and 2, they have been blessed with two children. He also affirms, that he has granted his consent and approval, to the marriage of appellant No.1 to appellant No.2.

In the above view of the matter, we are satisfied that in order to do complete justice in the matter, it would be just and appropriate to accept the prayer made in the petition, and to quash the First Information Report bearing No.645/2009 dated 13.12.2009 registered at Police Station Kashipur, District Udham Singh Nagar, and also to set aside the order passed by the High Court dated 18.12.2009. Ordered accordingly.”

5. Normally, in the facts of the present case, I would not have passed the orders for quashing of FIR considering the facts that the complainant as well as the victim are present before the court and it has been confirmed by them that Meenu @ Monica would be more happy if she resides with the petitioner, coupled with the fact that the life of the small child who is 5 years old is involved. The complainant has no objection to the same.

6. 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."

7. 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."

8. In view of the above facts and circumstances of the case, FIR No.40/2009, under Sections 363/368 IPC, registered at P.S. Prasad Nagar, Delhi and the proceedings emanating therefrom are quashed qua petitioner.

9. The petitioner will be released immediately if he is not involved in any other case.

10. The petition is accordingly disposed of.

11. Dasti under the signatures of the Court Master.

(MANMOHAN SINGH)
JUDGE

APRIL 13, 2015