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

+ W.P.(CRL) 1612/2014

SANTOSH & ANR

..... Petitioners

Through: Mr. Rajat Aneja and Ms. Rashmi
Verma, Advs.

versus

STATE & ORS

..... Respondents

Through: Mr. Rajesh Mahajan, ASC with SI
Ramesh Kumar, P.S. Sultan Puri.
Mr. Sachin Sharma, Adv. for R-4 to
R-6.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **19.05.2015**

By the present writ petition, petitioners seek quashing of FIR No. 704/2014 under Section 363 IPC registered against the petitioner no.1 at police station Sultanpuri on the complaint of respondent no.6-Krishna, who is sister of petitioner no.2. It is further prayed that respondent nos. 1 to 3 be directed to provide necessary police protection to the petitioners.

It is alleged in the petition that petitioners have married against the wishes of family members of petitioner no.2 and are being threatened by the respondent nos.4 to 6 with dire consequences. It is further alleged that respondent no. 6 got the false FIR registered against the petitioner no.1.

Vide order dated 12th August, 2014 respondent no.1 was directed to provide necessary protection to the petitioners through SHO concerned.

During the pendency of present petition, petitioner no.2 was produced before the Metropolitan Magistrate on 27th October, 2014 for recording of her statement under Section 164 Cr.P.C. Her statement was recorded wherein she has stated that she had accompanied the petitioner no.1 of her own free will. She has not alleged that she was kidnapped by the petitioner no.1. It appears that Metropolitan Magistrate was of the view that petitioner no.2 was a minor since her date of birth was mentioned as 8th September, 1997 in the school certificate. Accordingly, she was sent to Child Welfare Committee and ultimately she was sent to Nirmal Chhaya. Petitioner no.2 is still in Nirmal Chhaya.

Petitioner no.1 has filed an application in this Court seeking custody of petitioner no.2. Pursuant to the order passed by this court, petitioner no.2 was produced in Court on 10th February, 2015. She categorically stated that she was not willing to go with her mother, brothers and sister (respondent nos. 4 to 7) as they had been torturing her. She expressed her desire to go with the petitioner no.1. However, since petitioner no.2 is minor her custody is not given to petitioner no.1, so as to avoid cohabitation.

However, it is clear from the facts narrated hereinabove that petitioner no.1 had not taken away petitioner no.2 by using force or by enticing her in any manner, inasmuch as, no such allegations have been levelled by petitioner no.2 in her statement recorded under Section 164 Cr.PC. Even in court, petitioner no.2 has not stated that she was taken away by the petitioner against her wishes or by force. In S.Varadarajan vs. State of Madras AIR 1965 SC 942 Supreme Court has held thus:-

“There is a distinction between taking and allowing 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”.

For the foregoing reasons, FIR No. 704/2014 under Section 363 IPC registered at police station Sultanpuri and the consequent proceedings emanating therefrom are quashed. Interim order dated 12th August, 2014

whereby respondent no.1 was directed to provide necessary protection to the petitioner through SHO after assessing element of threat is also confirmed. Needless to add that after petitioner no. 2 attains the age of majority on 8th September, 2015 she would be free to go with the petitioner no.1, if she so desires.

Writ petition is disposed of in the above terms.

Dasti.

A.K. PATHAK, J.

MAY 19, 2015

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