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

Judgment delivered on: 30th July, 2015

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CRL.M.C. No.2836/2015

RAJ KAUSHAL

..... Petitioner

Represented by: Mr. Imran Khan and Mr. Habibur
Rehman, Advocates with Petitioner in
person.

Versus

STATE & ANR.

..... Respondents

Represented by: Ms. Jasbir Kaur, Additional
Public Prosecutor for the State
with SI Anand Pratap, PS
Anand Vihar.
Respondent No.2 alongwith her
daughter, Poonam @ Chandni
in person.

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. 498/2010 registered at Police Station Anand Vihar, Delhi, for the offence punishable under Section 363 IPC and consequential proceedings arising out of the same against the petitioner.

2. Learned counsel appearing on behalf of the petitioner submits that the aforesaid FIR was registered on the complaint dated

10.11.2010 lodged by the father (respondent No.2) of the prosecutrix, namely, Poonam @ Chandni, alleging kidnapping of his daughter by the petitioner from his lawful guardianship and marrying 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 prosecutrix were friends, having an affair and wanted to marry. The family members of the prosecutrix wanted to settle her marriage with some other fellow, therefore, she and the petitioner left their respective houses, resulting in registration of the FIR in question. It is stated that thereafter they got married and started living together as husband and wife. Out of the said wedlock, a male child, namely, Rohan has begotten, who is presently 3 ½ years old.

4. Learned counsel for the petitioner further submits that the petitioner and his wife came to Delhi on 29.06.2011 and thereafter, the petitioner was arrested in this case. He submits that statement of prosecutrix was recorded under Section 164 Cr.P.C., wherein she stated that she had left her house out of her own free will and accord as she was major and wanted to marry the petitioner, who has been falsely implicated in this case. Moreover, as per the ossification test conducted pursuant to order dated 08.12.2012 passed by the learned Trial Court, she was aged more than 18 years.

5. On the other hand, learned Additional Public Prosecutor appearing on behalf of the State submits that after completion of investigation charge sheet has been filed by the police, however, the

cognizance is yet to be taken. She further submits that FIR in question was registered against the petitioner on the complaint of respondent No.2, who has settled the dispute with the petitioner vide settlement/compromise deed dated 28.05.2015. Moreover, petitioner and the prosecutrix have entered into a marriage 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.2 is personally present in the Court alongwith his daughter, who have been duly identified by SI Anand Pratap, Police Station Anand Vihar, Investigating Officer of the case. The respondent No.2 submits that since his family has accepted this marriage, he has settled the matter with the petitioner vide settlement/compromise deed dated 28.05.2015. Therefore, he does not want to pursue the case further against the petitioner and has no objection if the present petition is allowed.

7. The prosecutrix, who is present in Court, submits 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. She has blessed with a baby boy, who is aged about 3 ½ years, thus, prays that to restore cordiality amongst the parties, proceedings arising out of FIR in question be brought to an end.

8. Admittedly, even if at the time of the incident, the prosecutrix was less than 18 years of age, case should not have been lodged by the police against the petitioner in view of the 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.”

9. In relation to offence under Section 363 IPC for which aforementioned FIR was registered against the petitioner, it would be appropriate to refer to a judgment of the Hon'ble Apex Court delivered in ***S. Varadarajan Vs. State of Madras, AIR 1965 SC 942***, wherein 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:-

" The fact of her accompanying the accused all along is quite consistent with her own desire to be the wife of the accused in which the desire of accompanying him wherever he went is of course implicit. Under these circumstances, no inference can be drawn that the accused is guilty of taking away the girl out of the keeping of her father. She has willingly accompanied him and the law does not cast upon him the duty of taking her back to her father's house or even of telling her not to accompany him.

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."

10. In the aforementioned case, the Apex Court by noting the distinction between taking and allowing a minor to accompany a person held that no case of kidnapping was made out.

11. In ***Ravi Kumar Vs. State & Anr.*** reported as ***124 (2005) DLT 1***, a Division Bench of this Court has ruled that the minority of the spouse cannot be a ground to declare their marriage illegal. As per this judgment, the marriage of such a spouse is neither void nor illegal on account of his or her being less than 18 years but over 15 years of age. I feel myself bound by the decision of this Court referred to above.

12. A three Judge Bench decision of the Supreme Court in '***Gian Singh Vs. State of Punjab***' (2012) 10 SCC 303, while recognizing the need of amicable resolution of disputes, has 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 by observing as under:-

“ Resolution of a dispute by way of a compromise between two warring groups, therefore, should attract the immediate and prompt attention of a court which should endeavour to give full effect to the same unless such compromise is abhorrent to lawful composition of the society or would promote savagery.

Where the High Court quashes a criminal proceeding having regard to the fact that the dispute between the offender and the victim has been settled although the offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an

end and peace is restored; securing the ends of justice being the ultimate guiding factor.”

13. 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.

14. Since the prosecutrix has lawfully married of her own free will, the petitioner cannot be blamed of kidnapping her. 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. Thus, considering the facts and circumstances of the case in hand and 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.

15. Keeping in view the law discussed above and the statements of the learned Additional Public Prosecutor for the State and respondent No.2, 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 prosecutrix who have already married and are living happily as husband and wife if the proceedings are quashed.

16. Consequently, FIR No. 498/2010 registered at Police Station Anand Vihar, Delhi, for the offence punishable under Section 363 IPC with emanating proceedings thereto, if any, is hereby quashed qua the petitioner.

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

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

**SURESH KAIT
(JUDGE)**

JULY 30, 2015
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