

\$~27

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

Date of Decision: July 21, 2015

+ **CRL.M.C. 2880/2015**

MITHUN KUMAR Petitioner

Through: Ms. Jyoti Gupta, Advocate

versus

THE STATE (NCT OF DELHI) & ANR Respondents

Through: Mr. Praveen Bhati, Additional
Public Prosecutor for respondent-
State with SI Mahender Partap
Respondent No.2 in person

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

%

Quashing of FIR No.582/2012, under Section 363 of the IPC, registered at police station Narela, Delhi is sought on the basis of affidavits of respondent No.2.

Learned counsel for petitioner submits that the statement of the prosecutrix recorded under Section 164 of the Cr.P.C. before the trial court does not incriminate petitioner.

Notice.

Mr. Praveen Bhati, learned Additional Public Prosecutor, accepts notice for respondent-State submits that respondent No.2, who is the father of the prosecutrix, has been identified to be complainant/first-informant of the FIR in question by SI Mahender Partap Singh on the basis of the identity proof produced by him. Learned Additional Public

Prosecutor for respondent-State further submits that the prosecutrix was 16 ½ years old at the time of the incident in question and the statement of the prosecutrix recorded under Section 164 of Cr.P.C. does not incriminate petitioner. It is also submitted that the trial of this FIR case has not yet begun and that initially the FIR was registered under Section 363 of IPC, but later on, charge-sheet in this FIR case has been filed for the offence under Section 366 of IPC also.

Respondent No.2, present in the Court, submits that the prosecutrix had voluntarily accompanied petitioner-accused and had willingly married him on 29th October, 2012 in Samasti Pur, Bihar and since then she is happily residing with petitioner and now, she is of major age and so, to restore cordiality amongst the parties, proceedings arising out of FIR in question be brought to an end.

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 since the statement of the prosecutrix under Section 164 of Cr.P.C. does not incriminate petitioner-accused and that the prosecutrix had willingly married petitioner and now she is happily residing with petitioner-accused since October, 2012, therefore, to restore cordiality amongst the parties, the proceedings arising out of the FIR in question deserve to be put to an end.

Accordingly, this petition is allowed and FIR No.582/2012, under Section 363 of the IPC, registered at police station Narela, Delhi and proceedings emanating therefrom are quashed qua petitioner.

This petition is accordingly disposed of.

(SUNIL GAUR)
JUDGE

JULY 21, 2015

s