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Respondent No. 2 was below 18 years of age, the Petitioner abducted her.

3. We have interviewed Respondent No. 3. She has stated that while she was 17 years and 9 months old, she willingly eloped alongwith the Petitioner. She stated that after she completed 18 years, she lawfully married with the Petitioner. The marriage certificate is annexed to the petition. She has also filed an affidavit stating therein that she was in love with the Petitioner, and therefore, she eloped with him and has now happily married. The Petitioner is having a shop and is carrying on business. He is also present in the Court today.

4. Notice was issued to Respondent No. 2 and in the said notice, it is stated that the petition will be finally disposed of at the stage of admission.

5. Taking into consideration facts of the present case, we are of the view that the offence of abduction is not made out since Respondent No. 3 had on her own accompanied the Petitioner. They are now happily married. She has stated before us that she has left her parental home on her own and had stayed with her distant relative

Mrs. Manda Shivaji Pise of Fursungi, Pune, and after completing 18 years, she legally got married with the Petitioner. It appears that Respondent No. 2 was not happy with the marriage of Respondent No. 3 with the Petitioner.

6. In the present case, we are satisfied that Respondent No. 3 was aware of the decision which she was taking and was capable of understanding the consequences of her action. According to her, she left the parental house and went to the house of distant relative. If the averments made in the complaint are read, they do not appear to be correct since Respondent No. 3 herself has admitted that she was staying with the distant relative.

7. This is not a case where the Petitioner married with Respondent No. 3 before she completed 18 years of age. It is well settled that for the purpose of marrying with a minor below the age of 18 years, consent of guardian is required under the Child Marriage Restraint Act. In the present case, the facts are different, since admittedly, Respondent No. 3 was 18 years when she got married with the Petitioner.

8. Reliance has been rightly placed on the judgment of the Apex Court in the case of – ***S. Varadarajan, Appellant Vs. State of Madras, Respondent [AIR 1965 942]*** In the said case an appeal by special leave was filed by the appellant from the judgment of the High Court of Madras, affirming the conviction of the appellant under Section 363 of IPC and sentence to undergo rigorous imprisonment for one year. In the said case, the prosecutrix Savitri was a minor, below 18 years of age, and she became friendly with the appellant Varadarajan, who was residing in a house next door to that of S. Natarajan, her father. The appellant was studying in Madras Medical College and the said Savitri was student studying in final year of B. Sc. in the local college. Both the appellant and the said Savitri eloped and went to the Registrar's office and got married. Thereafter a complaint was filed by her father. On the date of the marriage, she was a minor, and therefore, the appellant Varadarajan had taken her away from her parents' guardianship.

9. While examining the ingredients of s. 363 IPC, the Apex Court observed that taking or enticing the minor out of possession of the lawful guardian was an essential ingredient of the offence of

kidnapping. The Apex Court observed that in the said case, the question was whether the part played by the appellant amounts to “taking” out of the keeping of the lawful guardian of Savitri. The Apex Court in this context observed that she was not uneducated or unsophisticated village girl but a senior college student and was thus far more capable of thinking for herself and acting on her own. The Apex Court in paragraph 9 has observed as under:

“9. It must, however, be borne in mind that there is a distinction between "taking : and allowing a minor to accompany a person. The two expression are not synonymous though we would like to guard ourselves from laying down that in no conceivable circumstance can the two be regarded as meaning the same thing for the purposes of s. 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 this context, it will also be relevant to note the observation made by the Apex Court in paragraph 16 of the said judgment, which reads as under:

“16. The other case is *Rex v. James Jarvis (XX Cox's Criminal Cases, 249)*. There Jelf J., has stated the law thus to the jury :

"Although there must be a taking, yet it is quite clear that an actual physical taking away of the girl is not necessary to render the prisoner liable to conviction; it is sufficient if he persuaded her to leave her home or go away with him by persuasion or blandishments. The question for you is whether the active part in the going away together was the act of the prisoner or of the girl; unless it was that of the prisoner, he is entitled to your verdict. And, even if you do not believe that he did what he was morally bound to do-namely, tell her to return home-that fact is not by itself sufficient to warrant a conviction : for if she was determined to leave her home, and showed prisoner that that was her determination, and insisted on leaving with him- or even if she was so forward as to

write and suggest to the prisoner that he should go away with her, and he yielded to her suggestion, taking no active part in the matter, you must acquit him. If, however, prisoner's conduct was such as to persuade the girl, by blandishments or otherwise, to leave her home either then or some future time, he ought to be found guilty of the offence of abduction."

In this case there was no evidence of any solicitation by the accused at any time and the jury returned a verdict of 'not guilty. Further, there was no suggestion that the girl was incapable of thinking for herself and making up her own mind."

11. After taking into consideration the facts and circumstances of the case, we are satisfied that no offence under s. 363 of IPC has been made out against the petitioner. Moreover, Respondent No. 3 herself has stated before us that she was staying with her aunt, a relative and now she is happily married with the Petitioner. Respondent No. 2, despite service of notice, is not appearing before us.

12. The ratio of the judgment in the case of ***Narinder Singh & Ors., Appellants Vs. State of Punjab & Anr., Respondents***

[(2014) 6 SCC 466], in our view would squarely apply to the facts of the present case. We have, therefore, no hesitation in allowing the petition. Writ petition is allowed in terms of prayer clause (a) and is, accordingly, disposed of.

Sd/-

[Ms. NUTAN D. SARDESSAI, J.]

Sd/-

[V. M. KANADE, J.]

Vinayak Halemath