

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-20221-2016 (O&M)

Date of Decision : 16.12.2016

Sonu

.....Petitioner

Versus

State of Punjab

.....Respondent

Present : Mr. Dheeraj Mahajan, Advocate,

for the petitioner.

Mr. Navdeep Singh, DAG, Punjab,

for the respondent-State.

JAISHREE THAKUR, J.

1. The instant petition has been filed under Section 482 Cr.P.C. seeking quashing of FIR No. 10 dated 03.03.2016 under Sections 363, 366 of the Indian Penal Code (hereinafter referred to as “IPC), registered at Police Station Tibber, District Gurdaspur being an abuse of process of law.

2. In brief, the facts of the case are that on a statement of Kuldeep Masih that his daughter was taken away by the accused petitioner herein by alluring her for marriage, a FIR was registered under sections 363 and 363A IPC.

3. Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case for an offence of kidnapping whereas the daughter of the complainant, who is a major, left the house of her own free will. In fact, the complainant wanted to marry his daughter against her wishes and when she refused, she was ill-treated and harassed by

her parents and thereafter she started residing separately from her family

members at Pathankot. After the registration of the FIR, daughter of the complainant moved an application to the DGP, Punjab praying for cancellation of the false complaint moved by her father. She even submitted an affidavit before the Executive Magistrate stating that she has left the house of her own free will on account of the fact that her parents used to torture her and wanted to solemnize her marriage with a person whom she was not keen to do so.

4. Reply has been filed by way of an affidavit of Deputy Superintendent of Police, City Gurdaspur, who submits that the statement of the daughter of the complainant was recorded under Section 164 Cr.P.C. in the Court of Judicial Magistrate Ist Class on 04.05.2016 wherein she submitted that she had gone on her own will and without any pressure. In the reply filed, it is also submitted that on the date of occurrence the complainants daughter was major i.e. of 19 years.

5. I have heard learned counsel for the parties and with their assistance have gone through the record of the case.

6. The FIR has been lodged against the petitioner herein under Section 363 which is punishment of kidnapping any person from the lawful guardianship and Section 366 IPC which is kidnapping, abducting or inducing women to compel for marriage. In the instant case, the question of kidnapping the complainant's daughter would not arise since she has suffered a statement under Section 164 Cr.P.C. as well as furnished an affidavit to the effect that she voluntarily went with the petitioner and she left the house of her parents and is separately residing at Pathankot. Section 366 IPC would come into effect if there had been kidnapping with

inducement to marry, but in the instant case the complainant's daughter is major, who has affirmed that she went of her own accord. Even in the FIR statement of the complainant shows that his daughter had taken with her “Aadhaar card”, her certificate of the value of Rs. 20,000/- and ornaments comprising of gold chain, rings and ear rings. Thus as per the affidavit which can be believed she went of her own accord. Even the statement under Section 164Cr.P.C is to the same effect.

7. Therefore, in the instant case the FIR has been registered on a statement of the father which is controverted by the daughter of the complainant who is a major, that she left the house voluntarily and is residing separately in Pathankot, this Court is of the opinion that the proceedings under the FIR would tantamount an abuse of the process of law.

8. The question that would arise is whether this Court should interfere under Section 482 Cr.P.C. in quashing of the FIR. In a catena of cases it has been held that the High Court who exercise this power under Section 482 Cr.P.C. to prevent abuse of process of law. In **State of Haryana and Ors. v. Bhajan Lal and Ors. 1991(1) R.C.R.383** the Apex Court in the backdrop of interpretation of various relevant provisions of the Code of Criminal Procedure (for short, Cr.P.C.) under Chapter XIV and of the principles of law enunciated by the Supreme Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent powers under Section 482 Cr.P.C., gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the

process of the Court or otherwise to secure the ends of justice.

- (1) *Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
- (2) *Where the allegations made in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
- (3) *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
- (4) *Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
- (5) *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
- (6) *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
- (7) *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and*

with a view to spite him due to private and personal grudge.

9. Thus, this petition is allowed and FIR No. 10 dated 03.03.2016 under Sections 363, 366 of the Indian Penal Code, registered at Police Station Tibber, District Gurdaspur and all subsequent proceedings arising out of the same are quashed.

(JAISHREE THAKUR)

16.12.2016.

JUDGE

SP.

Whether speaking/reasoned

Yes

Whether reportable

No