

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

1. CRM-M No. 25174 of 2015

Bachitar Singh @ Preet

...Petitioner

Versus

State of Punjab & Others

...Respondents

2. CRM-M No. 22181 of 2015

Bachitar Singh @ Preet

...Petitioner

Versus

State of Punjab

...Respondent

Date of decision: 22.12.2016

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. L. S. Lakhanpal, Advocate for the petitioner.

Mr. Navdeep Singh, DAG, Punjab.

Ms. Amandeep Sibia, Advocate
for respondent No. 3 in first petition.

JAISHREE THAKUR, J. (Oral)

This common order shall dispose of above mentioned two petitions.

These petitions have arisen out of the same FIR bearing No. 46 dated 05.07.2013, registered under Sections 363 and 366-A of the IPC at Police Station Ghanie-ke-Bangar, District Batala.

Petitioner-Bachitar Singh @ Preet prays for quashing of the said FIR on the ground that he and and Sukhwinder Kaur, respondent No. 3 in first petition (who is present in Court), performed marriage on 25.07.2013 according to Sikh rites and ceremonies in Gurudwara Shri Akalgarh Sahib, Vadi Karor. At the time of marriage, Sukhwinder Kaur, respondent No. 3, was three months' short of being major. After having got married, both petitioner and respondent No. 3 approached this Court and

filed a petition under Section 482 Cr.P.C. bearing CRM-M No. 24424 of 2013 in which protection was granted to them. In the meantime, on 05.07.2013, an FIR bearing No. 46 under Sections 363 and 366-A of the IPC was registered at the behest of the mother of respondent No. 3 in which the petitioner has been declared as a proclaimed person.

It is argued that offence under Sections 363 and 366-A of the IPC is not made out from the facts of the instant case on account of the fact that Sukhwinder Kaur willingly and knowingly left her home in the company of the petitioner. It is argued that they continued to reside together happily and they are already expecting their first issue out of this wedlock. Sukhwinder Kaur is present in Court today through her counsel who admits that she left her home willingly and is now residing happily with the petitioner herein. Counsel for petitioner also contends that he was unaware of the order declaring him as a proclaimed person.

Notices were issued upon the complainant Rajwinder Kaur, however, despite notice, there is no representation on her behalf.

Counsel for the respondent-State argues that the girl was a minor at the time of occurrence and thus the offence under Sections 363 and 366-A of the IPC has rightly been made out and the same should not be quashed.

I have heard learned counsel for the parties and perused the record.

Admittedly, Sukhwinder Kaur, respondent No. 3, was 17 years and 09 months old at the time when she got married to the petitioner herein.

A similar matter came for hearing before Hon'ble Delhi High Court in

Rukshana & Anr. vs. Govt. of NCT of Delhi & Ors., 2007 (3) R.C.R.

(Criminal) 542, wherein the following observations were made:

10. Admitted facts are that both the petitioners are living together after marrying each other. The marriage was solemnised on 06.05.2005. Since then they are living together as husband and wife and leading blissful married life. They have been blessed with a male child who is still an infant. The only hurdle sought to be created by the respondents is that she was 16 years and six months of age and, thus, minor at the time of commission of the alleged offence. However, only because of this reason, I am of the view that in the facts and circumstances of this case, the petitioners cannot be denied the relief prayed for and it would be a fit case to quash the proceedings. This course of action is in the interest of not only the petitioner No. 1 but the petitioner No. 2 and, her child as well. The prosecution is launched on the allegations that the petitioner No. 2 is the victim of the crime. However, if the petitioner No. 1 is now prosecuted and convicted, again it would be the petitioner No. 2 who shall become the victim in that eventuality. Additional victim would be small child. Both of them would be rendered without any financial support and the consequences can be disastrous. We should not compound her sufferings and miseries more so when she willingly went with the petitioner No. 1 and married him. Recently a Single Judge of this Court in Vivek Kumar @ Sanju and another v. The State & another, Crl. M.C. No. 3073-74/2006 decided on 23.02.2007 took similar view. Following observations in that judgment are of some interest:

“There is no law which prohibits a girl under 18 years from falling in love with someone else. Neither falling in love with somebody is an offence under Indian Penal Code or any other penal law. Desiring to marry her love is also not an offence. A young girl, who is in love has two courses available to her – one is that she should marry with the consent of her parents after obtaining the consent of her parents. If her parents do not agree to persuade them or to wait for attaining the age of majority and then exercise her right as a major to marry the person of her own choice. However, this is possible only when the house of her parents where she is living has congenial atmosphere and she is allowed to live in peace in that house and wait for attaining age of majority. This might have been the reason in the mind of petitioner No. 2 when she told her father that she was in love and wanted to marry Sanju, but the response of father when daughter confided in him, created the fear in the mind of petitioner No. 2. Her father slapped her and told that her action would malign the religion and bring danger to the religion. He even threatened to kill her and marry her off to some rich person. When once a such a threat is given to a girl around 17 years of age, who is in love, under such circumstances she has a right to protect her person and feelings against such onslaught of her relatives even if the onslaught is from her own parents. Right to life and liberty as guaranteed by the Constitution is equally available to minors. A father has no right to forcibly marry off his daughter, who is below 18 years against her wishes. Neither he has right to

kill her, because she intends to marry out of her religion. If a girl around 17 years of age runs away from her parents house to save herself from the onslaught of her father or relatives and joins her lover or runs away with him, it is no offence either on the part of the girl or on the part of boy with whom she ran away and married.”

In the instant case the petitioner and respondent No. 3- Sukhwinder Kaur are residing happily and she, being the victim as alleged by her mother in the complaint, has made statement in Court that she would have no objection in case the said FIR is quashed. No doubt respondent No. 3 being old enough has decided in her interest to marry the petitioner without any fear and coercion.

Therefore, having regard to the observations made by Hon'ble Delhi High Court in ***Rukshana's case*** (supra) and judgments rendered by this Court in ***Dharamvir alias Sabhi vs. State of Punjab & Others, 2011(5) R.C.R. (Criminal) 700*** and ***Kuldeep Singh vs. State of Punjab & Others*** bearing ***CRM-M No. 33062 of 2013*** decided on 19.12.2014, no offence under Sections 363 and 366-A of the IPC is made out against the present petitioner.

Hence, both the above mentioned petitions are allowed and FIR No. 46 dated 05.07.2013, registered under Sections 363 and 366-A of the IPC at Police Station Ghanie-ke-Bangar, District Batala and all subsequent proceedings arising thereunder are hereby quashed including the order that was passed on 23.08.2014 declaring the petitioner a proclaimed offender.

Petitions stand disposed of accordingly.

December 22, 2016

Ansari

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No