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

Judgment delivered on: 12th January, 2016

+ **CRL.M.C. No.121/2016**

MOHD. WASIM

..... Petitioner

Represented by: Mr.Rahul Kumar Singh, with
petitioner.

versus

STATE OF NCT OF DELHI & ANR

..... Respondents

Represented by: Mr.Amit Ahlawat, APP for
the State with SI Mehrab
Alam, PS Khajuri Khas,
Delhi in person.
Respondent No.2 in person.
Ms.Nisha in person.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

Crl.M.A.No.513/2016 (for exemption)

Exemptions allowed, subject to all just exceptions.

Accordingly, the application is allowed.

CRL.M.C. No.121/2016

1. By way of this petition filed under Section 482 of the Code of Criminal Procedure, 1973, petitioner seeks quashing of FIR No.360/2011 registered at Police Station Khajuri Khas, Delhi, for the offence punishable under Section 363/366 of the IPC and the consequential proceedings emanating therefrom against him.

2. Learned counsel appearing on behalf of the petitioner submits that the aforesaid case was registered on the complaint of respondent No.1 Shakeel i.e. father of Ms.Nisha, who left her house at her free will with petitioner and thereafter, she married to petitioner on 29.07.2013 and the couple is blessed with a male child on 20.06.2014. Since, then, petitioner and Nisha are staying together happily. Since, initially the respondent No.2 was not aware about the affairs of petitioner and his daughter, therefore, he made the complaint, which was culminated in the FIR, noted above. Now, said respondent No.2 has accepted the marriage, thus, does not want to pursue the case against petitioner.

3. Respondent No.2, father of Nisha is personally present in the Court and has been duly identified by the Investigating Officer of the case. He submits that the complaint was made by him due to some misunderstanding. Since his daughter and petitioner are living happily as husband and wife and have been blessed with a male child on 20.06.2014, therefore, he does not wish to pursue the matter against the petitioner and has no objection, if the present petition is allowed.

4. Ms.Nisha, daughter of the complainant is personally present in the Court and has been identified by the concerned Investigating Officer. She stated 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 submits that after the marriage, her parents should not have any objection; however, a complaint was made by her father, which was culminated into FIR mentioned above. Therefore,

she has prayed that to restore cordiality amongst the parties, proceedings arising out of FIR in question be brought to an end.

5. Learned counsel for the petitioner further submits that though the prosecutrix was less than 18 years of age at the time of the incident, despite, the case should not have been lodged by the Police against the petitioner in view of 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.”

6. Learned APP appearing on behalf of the State submits that after investigation, petitioner has been charge sheeted for the offence punishable under Section 363 of the IPC and charges are yet to be framed against petitioner by learned Trial Court. The incident is a matrimonial one and since petitioner and daughter of respondent No.2 are living as husband and wife and have also been blessed with a male child, therefore, no useful purpose will be served in continuing the proceedings. Thus, the State has no objection if the present petition is allowed.

7. In ***S. Varadarajan Vs. State of Madras, AIR 1965 SC 942***, 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. In a situation, 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:-

"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 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."

8. A three Judge Bench decision of the Supreme Court in ***'Gian Singh Vs. State of Punjab' (2012) 10 SCC 303***, 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. The Supreme Court held that, however, such power must be exercised with due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victims family and the offender have settled the dispute.

9. 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.

10. Since the prosecutrix has lawfully married of her own free will, the petitioner cannot be blamed of kidnapping her. Relying upon the judgment of the Supreme Court in *S. Varadarajan's* case (*supra*), offence under Section 363 IPC is not made out against the petitioner. 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.

11. Keeping in view the law discussed above and the statements of the respondent Nos.1 & 2 as well as Ms.Nisha, wife of the petitioner, 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. Thus, it would be in the interest of justice and to avoid harassment to the petitioner and his wife who have already married, living happily as husband and wife and have blessed with a child,

if the proceedings are quashed.

12. Consequently, FIR No.360/2011 registered at Police Station Khajuri Khas, Delhi, for the offence punishable under Section 363/366 of the IPC with emanating proceedings thereto, if any, is hereby quashed qua the petitioner.

13. Accordingly, the petition is allowed with no order as to costs.

**SURESH KAIT
(JUDGE)**

JANUARY 12, 2016

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