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

+ W.P.(CRL) 402/2016

NAEEM & ORS

..... Petitioners

Through: Mr.Vishal Raj Sehijpal, Adv.

versus

STATE & ORS

..... Respondents

Through: Mr.R.S.Kundu, A.S.C. for the State
with Mr.Ankit Gulia and Mr.Vishesh
Wadhwa and Ms.Kranti Bhandari,
Advs.

Mr.Vishal R.Sehijpal, Adv. for R2-5.

Mr.Varun Agarwal, Adv. for R2-4.

SI Devi Lal, PS Mahendra Park.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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19.05.2016

1. By way of this writ petition filed under Article 226 of the Constitution of India read with Section 482 Cr.PC, the petitioner seeks quashing of FIR bearing No.599/2015 under Sections 308/324/323/34 IPC, PS Mahender Park, Delhi.

2. Case FIR No.599/2015 under Sections 308/324/323/34 IPC, PS Mahender Park, Delhi on the basis of Statement made by the parties Sh. Ashok Kumar, father of the Prosecutrix who came to the Police Station on 29.05.2012 to lodge a report about the missing of his daughter. As per the FIR, the Complainant informed the police that on 27.05.2012, his daughter 'G' (name withheld to conceal her identity) aged about 17 years and 4 months had gone to toilet at about 1.45 pm. When she did not return, he

tried to search her on his own level. On not being able to find his daughter, after two day he lodged the report with the police giving the description of his daughter and suspecting that the boy residing in their neighbourhood might have enticed away his daughter. He suspected Vikram Singh i.e. the Petitioner as he was residing as tenant on the first floor and was also missing from that very day. The case FIR No.87/2012 under Section 363 IPC was registered and during investigation, the Petitioner and the Prosecutrix both were recovered by the police from Satna, Madhya Pradesh.

3. The Prosecutrix was produced before learned MM and in her statement recorded under Section 164 CrPC, the Prosecutrix stated that she fell in love with the Petitioner in December, 2011. She was unhappy due to cruel treatment of her parents as most of the times they used to snub and beat her on petty issues. Her mother frequently used to tell her to leave the house as she did not want to see her face. Since she wanted to marry Vikram, she insisted him to marry her. Initially, he did not agree but on being insisted repeatedly, he agreed to marry her. She decided to leave the house to marry Vikram. On 27.05.2012 at about 1.00 pm, she on her own, without any fear or pressure, accompanied Vikram to Agra and from there, they left for Gwalior. After marrying Vikram in a Mandir on her own free will, she started residing with Vikram in a rented room. She further emphasized in her statement that she has married Vikram on her own free will and had gone with him on her own without being threatened or induced by any other person. She also stated that she wanted to live with Vikram only.

4. It appears that since the girl was below 18 years of age i.e. 17 years and 4 months, despite her stating categorically that she married the Petitioner of her own free will and was living with him as his wife, offence

under Sections 366/376 were also added in the FIR.

5. During pendency of proceedings, the Complainant - who is father of the Prosecutrix has settled the issue with his daughter and the Petitioner with whom his daughter has married now and the settlement deed is placed on record.

6. In the case of *Court of its Own Motion (Lajja Devi) v. State* 193 (2012) DLT 619 one of the questions framed was (Question no.4) – whether the FIR under Section 363 IPC or even 376 IPC can be quashed on the basis of the statement of a minor that she has contracted the marriage of her own.

It was answered as under :

‘Question No. 4

Whether the FIR under Section 363 IPC or even 376 IPC can be quashed on the basis of the statement of such a minor that she has contracted the marriage of her own?

46. This brings us to the anomaly with and in the Indian Penal Code. Consent below the age of 16 years is immaterial, except when the rape is committed by a male who is married to the girl. Section 376 IPC does not treat the rape committed by a husband on his wife above the age of 15 years as an offence. This certainly requires a relook. This provision is not in consonance with the PCM Act. Section 376 IPC is required to be rationalized and amended in consonance with the PCM Act, and it may be difficult to implement and effectively enforce the PCM Act otherwise. The question of age of consent for the purpose of Indian Penal Code is a larger issue, and not being a subject matter of the reference, has not been examined by us.

47. We often come across cases where girl and boy elope and get married in spite of the opposition from the family or parents. Very often these marriages are inter-religion, inter-caste and take place in spite of formidable and fervid opposition due to deep-seated social and cultural prejudices. However, both the boy and girl are in love and defy the society and their parents. In such cases, the courts face a dilemma and a predicament as to what to do. This question is not easy to answer. We feel that no straight jacket formula or answer can be given. It depends upon the facts and circumstances of each case. The

decision will largely depend upon the interest of the boy and the girl, their level of understanding and maturity, whether they understand the consequences, etc. The attitude of the families or parents has to be taken note of, either as an affirmative or a negative factor in determining and deciding whether the girl and boy should be permitted to stay together or if the girl should be directed to live with her parents. Probably the last direction may be legally justified, but for sound and good reasons, the Court has option(s) to order otherwise. We may note that in many cases, such girls severely oppose and object to their staying in special homes, where they are not allowed to meet the boy or their parents. The stay in the said special homes cannot be unduly prolonged as it virtually amounts to confinement, or detention. The girl, if mature, cannot and should not be denied her freedom and her wishes should not get negated as if she has no voice and her wishes are of no consequence. The Court while deciding, should also keep in mind that such marriages are voidable and the girl has the right to approach the Court under Section 3 of the PCM Act to get the marriage declared void till she attains the age of 20 years. Consummation of marriage may have its own consequences.

48. In case the girl is below 16 years, the answer is obvious that the consent does not matter. Offence under Section 376 IPC is made out. The chargesheet cannot be quashed on the ground that she was a consenting party. However, there can be special or exceptional circumstances which may require consideration, in cases where the girl even after attaining majority affirms and reiterates her consent.

49. Consummation, with the wife below the age of 15 years, is an offence under Section 375. No exception can be made to the said constitutional mandate and the same has to be strictly and diligently enforced. Consent in such cases is completely immaterial, for consent at such a young age is difficult to conceive and accept. It makes no difference whether the girl is married or not. Personal law applicable to the parties is also immaterial.

50. 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.'

7. In view of the statement made by the Prosecutrix under Section 164 CrPC as well as the settlement arrived at between the parties, it is necessary to quash the criminal proceedings against the Petitioner in exercise of inherent powers vested in this Court to enable the Petitioner as well as the Prosecutrix to settle in their life.

8. Accordingly, the petition is allowed and FIR bearing No.87/2012 under Sections 363 IPC PS Naraina, Delhi and all the proceedings arising therefrom are hereby quashed, leaving the parties to bear their own costs.

9. Order dasti.

PRATIBHA RANI, J.

MAY 19, 2016
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