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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(CrI.) 578/2016**

Decided on 10th August, 2016
..... Petitioner

AKSHIT SACHDEVA

Through: Mr. Sangram S. Saran, Advocate

versus

THE STATE NCT OF DELHI & ORS Respondents

Through: Ms. Srilina Roy for Ms. Nandita Rao,
ASC with SI Vikram Singh,
PS:Punjabi Bagh, New Delhi

Mr. R.P. Tiwari, Advocate for
respondent No.2.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J. (ORAL)

1. Ms. Kanika Sharma, daughter of respondent No.2 namely Rajeev Sharma, is present in Court and on an oral prayer made by the learned counsel for the petitioner, she is impleaded as respondent No.5. Amended memo of parties be filed during the course of the day.

2. The present FIR No.1027/2015 was registered at Police Station Punjabi Bagh, New Delhi, under Section 363 of the Indian Penal Code, 1860 ('IPC'), on the complaint of respondent No.2. He stated in the FIR that, on 29th September, 2015, his daughter, Kanika Sharma, i.e., respondent No.5, aged about 17 years, had gone to School, but had not returned.

3. A perusal of the documents placed on record shows that the respondent No.5 married the petitioner in '*Prachin Laxmi Narain Mandir*',

Pinjore, Haryana on 16th October, 2015. Thereafter, the petitioner and respondent No.5 filed a petition under Section 482 of the Code of Criminal Procedure, 1973 bearing No.CRM-M-36319 of 2015 in the Punjab and Haryana High Court at Chandigarh, seeking police protection. The said petition was disposed of vide order dated 20th October, 2015 seeking police protection. The operative portion of the order reads as under:

“Case in hand it is made clear that without commenting upon the legality of the marriage and entering upon an exercise to evaluate the evidentiary value of the documents produced in this petition, I dispose of the petition with direction to respondent no.2 to decide the representation of the petitioners, vide Annexure P-5 within a period of two weeks' from today, if any threat to their life and liberty is perceived then action be taken at the earliest. It is made clear that this order shall not be taken to protect the petitioners from legal action for violation of any law, if any committed by them. The petitioners are directed to furnish this order to the Commissioner of Police, Ludhiana-respondent No.2 at the earliest in order to take necessary action as directed above. Accordingly, petition is disposed of.”

4. It appears that petitioner and respondent No.5 came to Delhi. Subsequently, statement under Section 164 Cr.P.C. of the respondent No.5 was got recorded before the Metropolitan Magistrate, Tis Hazari Courts, Delhi on 2nd December, 2015, wherein she stated that she had accompanied the petitioner on her own and married him on 16th October, 2015 at ‘Prachin Laxmi Narain Mandir’, Pinjore, Haryana. A perusal of said statement makes it clear that respondent No.5 had left her house of her own free will, without any inducement exercised by the petitioner.

5. Respondent No.5 is present in Court and states that she again started living with her parents and lived with them from 10th December, 2015 to 28th June, 2016. She submits that on 28th June, 2016 she again left her house and started living in a paying guest accommodation at H-32, Bali Nagar, Delhi. She further submits that now she is a major.

6. Learned Counsel for the respondent No.1 submits that proof of age of respondent No.5 was obtained from Hansraj Model School, Punjabi Bagh, New Delhi, according to which her date of birth is 28th May, 1998. This shows that respondent No.5 is now above 18 years of age and is major.

7. On 23rd February, 2016, respondent No.2 had appeared in Court in person and stated that he had no objection if the FIR in question is quashed, in view of the settlement.

8. From the facts narrated above, and more particularly, the statement of respondent No.5 under Section 164 Cr. PC recorded by the learned MM, it is clear that she had left her parents house of her own free will and joined the company of the petitioner, without any enticement from him.

9. In ***Court on Its Own Motion (Lajja Devi) & Ors. v. State & Ors., 2012 Legal Eagle (Del) 1415***, the Full Bench of this Court held as under:

“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.”

10. In ***S. Varadarajan v. State of Madras, MANU/SC/0081/1964***, the Supreme Court held thus:-

“.....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 persons. 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.”

11. In the facts of the present case, where it has come on record that respondent No.5 had left her parents house on her own free will and accompanied the petitioner voluntarily without any inducement held out by the petitioner, the FIR No.1027/2015 registered at Police Station Punjabi Bagh under Section 363 IPC is quashed.

Dasti.

A.K. PATHAK, J

AUGUST 10, 2016/tp