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

Judgment delivered on: 24th February, 2016

+ **CRL.M.C. No.799/2016**

RAMU MANDAL & ANR

..... Petitioners

Represented by: Mr.Ghanshaym Thakur
and Ms.Harish Khimchi,
Advs with petitioners.

versus

THE STATE (GNCT OF DELHI) & ORS

..... Respondents

Represented by: Mr.Ashish Dutta, APP for
the State with SI Ranbir
Singh, PS Kashmiri Gate
Metro Station, Delhi.
Respondent Nos.2 & 3 in
person.

**CORAM:
HON'BLE MR. JUSTICE SURESH KAIT**

SURESH KAIT, J. (Oral)

1. By way of this petition filed under Section 482 of the Code of Criminal Procedure, 1973, petitioners seek quashing of FIR No.80/2013 registered at Police Station Kashmiri Gate, Delhi, for the offence punishable under Section 363 of the IPC and the consequential proceedings emanating therefrom against them.

2. Learned counsel appearing on behalf of the petitioners submits that the aforesaid case was registered on the complaint of respondent No.2 Ms.Rani Devi for the missing of her daughter respondent No.3/

namely Ms.Nishu Kumari, aged 13 years. On lodging the said report on 09.07.2013, police registered the case and traced her out on 21.07.2013. After realising the facts, respondent No.2 has settled the matter with petitioners and does not wish to pursue the case against them.

3. Respondent No.2 and respondent No.3 are personally present in the Court and has been duly identified by the Investigating Officer of the case, above named. Respondent No.2 submits that her daughter respondent No.3 had gone with petitioner No.2 with her own will without any pressure or threat as they were staying in a same house on rent. Both petitioners have taken respondent No.3 to their village at Gopal Pur, District Supaul, Bihar. She further submits that petitioners are also from Bihar and they knew each other even prior to the incident, however, due to some misunderstanding she lodged the complaint, which culminated into registration of the FIR.

4. Respondent No.2 further submits that police traced her daughter on 21.07.2013 from the village of petitioners, mentioned above. There is no allegations of sexual assault and respondent No.3 was also got medically examined. Pursuant to the settlement between the parties, she does not wish to pursue her case against petitioners. She also submits that since the matter stands settled between them, therefore, to restore cordiality amongst the parties, proceedings arising out of FIR in question be brought to an end.

5. Learned counsel for the petitioners further submits that though the respondent No.3/victim 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 petitioners 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. Moreover, petitioners are father and son respectively. There was no occasion to kidnap the victim. Thus, the petitioner deserves to be allowed.

7. On the other hand, learned Additional Public Prosecutor appearing on behalf of the State submits that FIR in question was registered against the petitioners as on the date of incident, the respondent No.3 was stated to be 13 years of age. He further submits that since the respondent No.3/victim and her mother/complainant do not want to pursue this case further against the petitioners, therefore, no useful purpose will be served in continuing the proceedings. Thus, the State has no objection if the present petition is allowed.

8. 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."

9. 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.

10. 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.

11. 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 petitioners. 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.

12. Keeping in view the law discussed above, the fact that matter stands settled between the parties and the statements of the learned APP for the State and respondent No.2, 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 if the proceedings are quashed.

13. Consequently, FIR No.80/2013 registered at Police Station Kashmiri Gate, Delhi, for the offence punishable under Section 363 of the IPC with emanating proceedings thereto, if any, is hereby quashed.

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

**SURESH KAIT
(JUDGE)**

FEBRUARY 24, 2016

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