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

Judgment delivered on: 04th March, 2016

+ CRL.M.C. 932/2016

FARMAN @ TOHID ALAM

..... Petitioner

Represented by: Mr. Sunil Kumar and
Mr. Kamal Jairath, Advs.

versus

THE STATE (NCT OF DELHI) & ORS

..... Respondents

Represented by: Mr. Satya Narayan
Vashishth, APP for State with SI Ram Bhau,
PS-Khyala.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT
SURESH KAIT, J. (Oral)

Crl.M.A.3962/2016 (for exemption)

Exemptions allowed, subject to all just exceptions.

Accordingly, the application is allowed.

+ **CRL.M.C. 932/2016**

1. By way of the present petition filed under Section 482 of the Code of Criminal Procedure, 1973, petitioner seeks directions thereby quashing of FIR No. 0794/2015 registered at Police Station Khyala for the offences punishable under Sections 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.2 due to some misunderstanding as her daughter left the house on 26.12.2015 without informing her and she thought that her daughter

was kidnapped by the petitioner. Accordingly, she made a complaint. Ld. Counsel further submits that respondent no. 2 was 16 years of age at that time and was detained by GRPF Aligarh and returned home on the very next date. There is no allegation of sexual assault against the petitioner.

3. By virtue of this petition, the petitioner prays for quashing of the FIR and the proceedings emanating from the same on the ground that due to the intervention of the family friends of both sides and respectable members of the society, in the larger interest of both the parties the respondent Nos.2 and 3 and the petitioner have amicably settled their dispute. Thus, the present petition may be allowed.

4. 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.”

5. On the other hand, learned Additional Public Prosecutor appearing on behalf of the State submits that FIR in question was registered against the petitioner as on the date of incident, the respondent No.2 was stated to be 16 years of age. He further submits that since the respondent No.3/complainant and her daughter respondent no.2 do not want to pursue this case further against the petitioner, therefore, no useful purpose will be served in continuing the proceedings. Thus, the State has no objection if the present petition is allowed.

6. Respondent nos. 2 and 3 are present in the Court. Respondent no. 3 states that she has filed the complaint due to some misunderstanding as she thought that her daughter was kidnapped by the petitioner. However, later on came to know that the petitioner had no role in taking respondent no.2. She further submits that matter has been settled between the parties. Therefore, to restore cordiality amongst the parties, proceedings arising out of FIR in question be brought to an end.

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. 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, the fact that matter stands settled between the parties and the statements of the learned Additional Public Prosecutor for the State and respondent No.3/complainant, 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.

12. Consequently, of FIR No. 0794/2015 registered at Police Station Khyala for the offences punishable under Sections 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)**

MARCH 04, 2016

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