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

+ W.P.(CRL) 2905/2016

JUNED QURESHI & ORS.

..... Petitioners

Through :Ms. Fizani Husain, Adv. for
petitioner nos. 1 to 6 with petitioner
nos. 1 and 5 in person.

versus

STATE & ANR.

..... Respondents

Through :Mr. Piyush Singhal, Adv. for Mr.
Ashish Aggarwal, ASC with ASI S.K
Srivastava, P.S. Chandni Mahal

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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21.10.2016

Petitioners have filed this petition under Article 226 of the Constitution of India praying therein that FIR no. 179/2016 under Sections 363/366 IPC read with Section 9 of the Prohibition of Child Marriage Act, 2006 registered at Police Station Chandni Mahal be quashed.

It is noted that aforesaid FIR was registered on the complaint of petitioner no. 5. She alleged in the FIR that petitioner no. 1 used to stalk her. He also used to talk to her on her mobile phone. On 5th August, 2016

petitioner no. 1 called her at Tiraha Berum Khan. At about 5:00/5:30 PM, he came there on his scooty and took her to a nearby shop. He offered her a cold drink, which she drank. Thereafter, petitioner no. 1 took her on his scooty to his house and without her consent *nikaah* was solemnized. Her family members came to the house of petitioner no. 1, at which petitioner no. 1 said that he would commit suicide and implicate her family members. Subsequently, in her statement under Section 164 Cr.P.C. she stated that petitioner nos. 2 to 4, who are mother, sister and brother-in-law of the petitioner no. 1 were also present, though she had not named there in the FIR.

It may be noted that petitioner no. 1 filed W.P.(Crl.) No. 2468/2016, wherein vide order dated 9th September, 2016 the Division Bench of this Court directed the police to ensure that there is no violence or physical harm caused to anyone. The Division Bench has observed that directions to the police were given without expressing any opinion on the question whether or not the respondent no. 7 (petitioner no. 5 herein) was entitled to reside with the petitioner nos. 1 to 4.

Petitioner no. 5 is present in Court and states that she was present in Court on 9th September, 2016 during the hearing of the writ petition and

thereafter, she had accompanied the petitioner nos. 1 to 4 to their house and is presently living with them. Thus, it is clear that petitioner no. 5 is living with the petitioner nos. 1 to 4 in their house since 9th September, 2016. She has categorically stated to this effect.

Petitioner no. 1 and petitioner no. 5 have married as per muslim rites and ceremonies. *Nikaah* has been solemnized. Earlier, petitioner no. 5 had alleged that *nikaah* was solemnized without her consent. However, today in Court, she states that she had given such a statement as she was influenced to do so by her parents. Petitioner no. 5 is more than 17 years of age.

In Shamsuddin vs. State and Ors. MANU/DE/2189/2009, the Division Bench of this Court has held thus:-

“Construing Section 6 of the Guardians and Wards Act, 1890, this Court in Mohd. Nihal (supra) came to the conclusion that when a Court is called upon to determine the welfare of a minor so far as appointing a guardian of his /her person or property or both is concerned, the exercise would have to be determined in consonance with Muslim Personal Law (Shariat) in disputes between persons adhering to the Islamic faith. The said decision then examined the provisions of the Indian Contract Act, 1972 in view of the fact that a Muslim marriage is in the form of a contract. Referring to Section 11 of the said Act, the Division Bench held that the section specifies that every person is competent to contract who is of the age of majority according to the laws to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject. The

Court specifically observed that Section 11 of the Indian Contract Act in terms prescribed the applicability of personal laws on the issue of competency of a person to enter into a contract. From this principle as well as upon a consideration of several other decisions, the said Division Bench in Mohd. Nihal (supra) concluded that a Muslim girl, who has reached puberty or is presumed to have reached puberty on attaining the age of 15, is competent to enter into matrimony even if this partakes of a contract simpliciter”.

In, Court on its own motion, (Lajja Devi) & Ors. vs. State, 193 (2012) Delhi Law Times 619 (FB), it has been held, thus, “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.”

In this case, parents of the petitioner no. 5 are not the complainant. FIR was registered on the complaint of petitioner no. 5. She is not willing to pursue the FIR any further as she has opted to live with the petitioner no. 1 and his family and is living with them since 9th September, 2016.

Keeping in mind the facts and circumstances in this case, FIR no. 179/2016 under Sections 363/366 IPC read with Section 9 of the Prohibition of Child Marriage Act, 2006 registered at Police Station Chandni Mahal, which is at the investigation stage, is quashed.

Petition is disposed of in the above terms. Dasti.

A.K. PATHAK, J.

OCTOBER 21, 2016

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