

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL MISC. PETITION NO. 699 OF 2015

Mohammad Hasnain Barkati, S/o Mohammad Idrish Nuri, aged about 29 years, R/o Vivekanand Nagar, Mopka, P.S. Sarkanda, Tahsil Bilaspur, Civil and Revenue District Bilaspur (C.G.)

... Petitioner

Versus

1. State of Chhattisgarh, through Police Station Civil Lines, Revenue District Bilaspur, District Bilaspur (C.G.)

2. Smt. G. Supriya, W/o Mohammad Hasnain Barkati, aged about 20 years, R/o Vivekanand Nagar, Mopka, P.S. Sarkanda, Tahsil- Bilaspur, Civil and Revenue District- Bilaspur (C.G.)

... Respondents

For Petitioner	:	Ms. Renu Kochar, Advocate.
For Respondent No.1	:	Mr. Ashish Shukla, Government Advocate.
For Respondent No.2	:	Ms. Sonia Kuldeep, Advocate.

Hon'ble Shri Justice P. Sam Koshy

C A V ORDER

Reserved on : 22.12.2016

Passed on : 30/01/2017

1. The present petition under Section 482 of CrPC has been filed by the Petitioner seeking for quashment of the FIR dated 10.11.2014 (Annexure P-1) registered as Crime No. 251 of 2014 at Police Station Tarbahar, District Bilaspur and the consequent criminal case which has been initiated on the basis of the said FIR, which is pending consideration before the learned Additional Sessions Judge (F.T.C.), Bilaspur.

2. Brief facts relevant for the adjudication of the present petition are that, a report was lodged at the instance of G. Diwakar Rao, the father of Respondent No.2, alleging that present Petitioner is said to have abducted his wife as well as his minor daughter and kept them under his custody. It was further alleged that during the period when the two were in the custody of the Petitioner, he has managed to maintain physical relationship with the minor Respondent No.2, i.e., daughter of the Complainant, and on account of which she got conceived and later delivered a child also. Based upon the report, an FIR was lodged and in due course of time, charge-sheet was also filed on 13.4.2015 wherein offence under Sections 363, 366, 368, 376 of Indian Penal Code and Section 4 of the Protection of Children from Sexual

Offences Act was registered, and in due course of time the matter was put to trial before the Additional Sessions Judge (F.T.C.), Bilaspur where the case has been registered as Special Criminal Case No. 163 of 2015. It is this criminal prosecution which has been sought to be quashed by the Petitioner.

3. According to the Petitioner, Respondent No.2 is the daughter of the Complainant, G. Diwakar Rao, who is a resident of Link Road, Bilaspur and she is a major. According to the Counsel for the Petitioner, the Petitioner and Respondent No.2 fell in love with each other and after some time they had performed marriage on 7.5.2013 as per the Muslim rights and rituals. Since the time of marriage both are happily living together and in due course of time two children have been born to them and their first child is aged about 2 years and 10 months and the second child is aged about 6 months. According to the Petitioner, since the relationship between the Petitioner and Respondent No.2 was not acceptable to the father of Respondent No.2 and the marriage between the two also was not acceptable to him, he had lodged the written complaint with a malafide intention of somehow trying to remove the Respondent No.2 from the company of the Petitioner and also with malafide intention of harassing the Petitioner or, for that matter, to teach him a lesson he has filed this false complaint.

4. According to the Petitioner, meanwhile the police authorities on the complaint of the father of Respondent No.2, called upon the Petitioner and Respondent No.2 and also the mother of Respondent No.2, who is the wife of the Complainant, before Mahila Paramarsh Kendra and from where they took the Respondent No.2 as well as her mother into custody and they had been subjected to physical torture and forced to make a statement against the Petitioner with a clear intention of the Petitioner to be arrested in the light of the said complaint and the statement so made.

5. Meanwhile, the Petitioner filed a petition under Article 226 of the Constitution of India, seeking for the relief of a Writ of Habeas Corpus, which was registered as Writ Petition (Habeas Corpus) No. 34 of 2014, wherein the Complainant was also a party as Respondent No.6. The said writ petition came up for hearing on 9.12.2014 wherein the Respondent No.2 was also brought before the

Division Bench and she made a categorical statement that she was firstly a major and has married the Petitioner and has also given birth to a child from the said marriage. In the light of the statement made by Respondent No.2, the Division Bench permitted the Respondent No.2 to go to the house of the Petitioner and stay with the Petitioner and the habeas corpus petition was thus disposed of. Since then the Respondent No.2 has been continuously staying with the Petitioner and meanwhile another child was also born to them in due course.

6. That, the Petitioner had also preferred an application for grant of anticipatory bail under Section 438 of CrPC before the Court of Additional Sessions Judge (F.T.C.), Bilaspur, and which was also allowed vide order dated 7.1.2015. It is then the charge-sheet was filed on 13.4.2015 alleging sexual abuse of Respondent No.2, the minor, by the Petitioner and matter was fixed for the arguments before framing of charge. It is then that the present petition has been filed on 7.8.2015. The matter came up for hearing before this Court on 26.8.2015 and this Court on the said date while issuing notice to the Respondents, had stayed the further proceeding of Criminal Case No. 163 of 2015 arising out of Crime No. 251 of 2014 of Police Station Tarbahar and since then the proceeding of the Court below stands stayed.

7. Counsel for the Petitioner averred that the present petition has been filed seeking for the quashment of the entire case initiated at the behest of the Complainant which is now pending consideration before the Court of Additional Sessions Judge (F.T.C.) Bilaspur. According to the Counsel for the Petitioner, taking into consideration the peculiar facts and circumstances of the case, no fruitful purpose would be served if the Petitioner is subjected to face the entire trauma of trial when the Petitioner and Respondent No.2 have been staying together since more than 3 years and are married to each other and that the parties who have been present before this Court have made a statement that they want the matter to be closed once and for all.

8. Respondent No.2 who has been present before this Court, on a query being asked, has made a statement that she does not want the Petitioner to be prosecuted any further and she has married the Petitioner and also stays as his wife with the Petitioner and therefore on that count also, the prosecution may be closed

once and for all.

9. Counsel for the Petitioner also referred to the judgment of the Division Bench rendered in the Habeas Corpus petition, wherein also taking into consideration the entire facts and circumstances of the case, the Division Bench had permitted the Respondent No.2 to go and reside with the Petitioner and since then they have been staying together as husband and wife. The Counsel also submits that by efflux of time the Respondent No.2 has also given birth to two children, first aged about 2 years and 10 months and the second of 6 months of age, and both of whom are presently living along with Respondent No.2 and the Petitioner. It was further contended that now that the family is happily living together it would rather be unjust on the part of the prosecution if they pursue with the case any further and subject the Petitioner to face the trauma of trial and if the continuation of the prosecution itself is not going to serve any purpose nor is there any likelihood of Respondent No.2 deposing against the Petitioner, the continuation of criminal case would be a futile exercise and is nothing but an empty formality of the proceeding being drawn and thus prayed for the quashment of the prosecution case.

10. According to the Counsel for the Petitioner, since the Respondent No.2 who has also appeared before this Court and has made a statement that she has no grievance or complaint whatsoever against the Petitioner and that the Petitioner has legally wedded Respondent No.2 and they are happily living as husband and wife for last more than 3 years, in addition the birth of two children that took place from their wedlock, and there is not much left for the Court to adjudicate upon and therefore the entire prosecution deserves to be quashed. As per the Counsel for the Petitioner, the Division Bench of this Court itself has given the approval and nod to Respondent No.2 to stay along with the Petitioner. The Counsel further referred to the written complaint lodged by the Complainant and also the contents of the FIR which also very clearly reflects that there was not any amount of pressure, fraud, mischief or any sort of inducement made by the Petitioner for the alleged act of kidnapping and rape i.e. the charge which is alleged against the Petitioner. According to the Counsel for the Petitioner, from the statement of the father of Respondent No.2 itself and also the statement of the Respondent No.2 and her mother, reflects that they had

voluntarily walked out of the house of the Complainant and had taken shelter in the house of the Petitioner. Counsel for the Petitioner further submits that it is a case where there is no iota of evidence in the entire charge-sheet which has been filed or in any of the statements which have been recorded during the course of investigation to show that the Petitioner had at any point of time tried to put force, pressure or coercion for the alleged act of abduction or kidnapping of Respondent No.2. Counsel for the Petitioner drew the attention from the complaint, which clearly gives an indication of the wife of the Complainant and his daughter both had voluntarily gone along with the Petitioner, and the Respondent No.2 got married to the Petitioner. Counsel for the Petitioner referred to the document (Annexure R/2-5) which is the Aadhar Card of Respondent No.2, wherein the date of birth of Respondent No.2 is reflected as 2.3.1995 which clearly establishes the fact that on the date when she had gone to stay with the Petitioner she was a major. Counsel for the Petitioner contested that the ingredients required for the offence under Section 363, 366, 368 of IPC and that of the POCSO Act is not made out, for the reason that Respondent No.2 was always in the company of her mother and that her father knew where the Respondent No.2 was staying and that her father has also moved an application under Section 35 of the CrPC for the custody of his wife and as such no case or offence is made out against the Petitioner.

11. Counsel for the Petitioner lastly submits that the Complainant, the father of Respondent No.2, since was not agreeing the relationship/marriage of the Petitioner with Respondent No.2, he had tried all sorts of tricks so that the Respondent No.2 can be separated with the Petitioner and with this intention the Complainant had also falsely cooked up the story of the Respondent No.2 being a girl with psychiatric problem and using his influence the Complainant had got the girl as well as her mother admitted at the Government Psychiatric Centre in Bilaspur. According to the Counsel for the Petitioner, all these torture and harassments were being put upon the Petitioner and Respondent No.2 only on account of the fact that the two belonged to a different religion and had entered into an inter-religious marriage.

12. Per contra, learned Counsel for the State submits that in the instant case charge-sheet was filed on 13.4.2015 and that the Petitioner did not challenge the framing of charge and hence he cannot now be permitted to challenge the entire criminal prosecution itself at this belated stage. At the stage of recording of evidence, it would not be proper for this Court to go into the merits of the case and decided the petition under Section 482 of CrPC. According to the Counsel for the State, the case of the prosecution all along is that the Respondent No.2 was a minor girl and therefore the provisions of POCSO Act is clearly made out at-least prima facie is made out and the rest of the facts have to be adjudicated upon after the evidence are recorded. Exercise of powers under Section 482 of CrPC should not render the POCSO Act redundant. He further alleges that the Complainant, i.e., the father of Respondent No.2, has not been a party to the present petition and therefore he is a necessary party in the present case as such the petition is technically not maintainable. The State Counsel further referred to a birth certificate wherein the date of birth is referred as 2.8.1996 and if that is taken into account, the Respondent No.2 on the date when the complaint was lodged, was a minor. He thus prayed for the rejection of the petition.

13. Counsel for the State refers to the decision of the Supreme Court rendered in the cases of *Swaran Singh & Ors. V. State through Standing Counsel & Anr.* [2008 (8) SCC 434], *Shimbhu & Anr. V. State of Haryana* [2014 (13) SCC 318] and *State of Madhya Pradesh V. Madanlal* [2015 (7) SCC 681]. According to the State Counsel, the power under Section 482 of CrPC has to be sparingly used by the High Court while a petition for quashing of criminal prosecution has been sought for. According to the Counsel for the State, the prosecution in the instant case has brought before the Court the fact that from the contents of the charge-sheet, the custody of Respondent No.2 being taken away by the Petitioner is not in dispute and now the Petitioner is trying to build up a case of a consensual relationship and a consensual parting of Respondent No.2 from her parental home to the house of the Petitioner, but the fact remains that she was a minor and even if she had gone with him voluntarily the consent would not be of much relevance. Therefore, it is not a fit case where the discretionary power under Section 482 of CrPC conferred upon this court

has to be exercised in favour of the Petitioner. The State Counsel further submits that the Respondent No.2 also is not mentally sound and in between she was also given psychiatric treatment after she was brought over to the police authorities, which all the more is a ground for rejection of the petition so that the Trial Court itself could judge the fact that whether she was medically/mentally unwell or not. Thus, for all the aforesaid reasons, the State Counsel prays for the rejection of the petition so that the Trial Court can on the basis of the evidence which have come on record, reach to a logical conclusion as to whether the commission of the offence is made out or not.

14. Having heard the rival contentions put forth on either side and on perusal of the record, what has to be appreciated at the first instance is that a written complaint which was lodged by the father of Respondent No.2, i.e., the Complainant, on 10.11.2014. The plain reading of the complaint itself would reflect that it was the Complainant who used to continuously take the Respondent No.2 on the pretext of some treatment to the Petitioner. In the complaint it is also reflected that the wife of the Complainant, i.e., the mother of Respondent No.2, also was all along in the company of Respondent No.2 when they were undergoing the treatment from the Petitioner. The complaint also reflects that in between the Respondent No.2 and her mother, i.e., the wife of the Complainant, had also travelled with the Petitioner to different places. As per the complaint, they had gone to Nepal, Bihar etc., and came back after few days. The statement of the Complainant as well as the written complaint both reflect that the mother of Respondent No.2 also has left the company of the Complainant and was staying along with Respondent No.2 in the house of the Petitioner. Thus, from the aforesaid facts, it can clearly be stated to be a case where the Respondent No.2 even if she was a minor she was in the company of her mother, one of the natural guardians, all along while they were in the house of the Petitioner.

15. During the course of hearing, the Respondent No.2 was present before the Court and she has categorically made a statement before the Court that she was a major and she has duly married the Petitioner and since marriage she is staying with the Petitioner and as a result of their marriage life there are two children born to

them and all of them are staying as a family and she makes a payer to the Court that the criminal prosecution filed against the Petitioner being a false complaint and that she has voluntarily and wholeheartedly gone and accepted the relationship with the Petitioner without any inducement or false pretext and therefore she wants the case to be closed once and for all. She further submits that if the Petitioner is subjected to trial it would amount to great injustice and the entire family itself would get affected and therefore she requests this Court for the closure of the entire case.

16. Another aspect which cannot be brushed aside is the undisputed fact by all the parties that as on date the Respondent No.2 is more than 20 years of age and that admittedly she has given birth to two children from the Petitioner. It is also not in dispute that the Respondent No.2 and the two children born to them are all staying together happily. It is also not in dispute by either of the parties that the mother of Respondent No.2 is also staying with them. To further support the claim of the Petitioner for quashment of the criminal prosecution, Respondent No.2 as well as her mother had also filed their respective affidavits before the Trial Court itself stating that the complaint lodged by the Complainant was a false complaint and the complaint case therefore should be rejected or dropped.

17. One of the most vital factors which has to be kept in mind by this Court is the fact that the Petitioner had filed a Habeas Corpus petition before the Division Bench of this Court on 17.11.2014, which was registered as Writ Petition (Habeas Corpus) No. 34 of 2014, whereas the complaint is of 10.11.2014. It is also pertinent to note that in the said habeas corpus petition, the Complainant was also a party and the Division Bench of this Court passed their order on 9.12.2014. For ready reference, it would be relevant to quote the said order of the Division Bench passed in habeas corpus petition:

1. Detenue G. Supriya appeared before this Court along with her mother G. Vimla and Mr. Abhishek Pandey, counsel. He has filed affidavit. Respondents No. 1 to 5 have also filed counter.
2. As per annexures, reply and counter of respondents No. 1 to 5, detenue G. Supriya has informed them that she has married with petitioner and one daughter born out of matrimonial relationship of the petitioner and detenue.
3. Detenue submits that she has married with the petitioner was residing with petitioner. Her mother G. Vimla, who is present in the Court was also residing with them. Detenue delivered a female child aged about 9 month who is present with her. She further submits that after filing of this petition, she was searched

by police officer, she refused to go with them.

4. She also submits that one Ku. Deepika Sharma, Bureau Chief of World One News came into contact with her who deal with the problems of woman. She requested her for shelter and she stayed with family members of Ku. Deepika Sharma since 27.11.2014. Ku. Deepika Sharma is also present in the Court. Being asked, detainee G. Supriya specifically submits that she will reside with the petitioner Mohammad Hasnain Barkati and not with her father.
5. As per affidavit of the detainee, her age is 20 years. She is major.
6. Learned counsel for the petitioner submits that the petitioner is not present in the Court. He has gone for some work.
7. In the light of specific submission of detainee, who is major, she is permitted to go to the house of petitioner. Petitioner is not present, therefore, Ku. Deepika Sharma, under whose shelter detainee was staying for few days, is directed to accompany the detainee upto the house of the petitioner after giving in writing the aforesaid fact.”

18. A bare perusal of the aforementioned order itself would show that the Division Bench of this Court itself had accepted the version of Respondent No.2 of her being a major in the light of the affidavits which were filed in the said habeas corpus petition and had permitted them to stay together and live happily which they have been doing. Another aspect which has to be noted is that after the disposal of the habeas corpus petition and the parties starting staying together they have another child born from the said relationship. In other words, they have got a legal authority decided in their favour that is the judgment of the Division Bench in the Habeas Corpus petition permitting them to reside together for more than a couple of years and by efflux of time the Respondent No.2 has still grown older.

19. So far as the power under Section 482 of CrPC is concerned, undisputedly the said power is a discretionary power conferred upon a court to be exercised only under two circumstances; one, to prevent abuse of process of any court and, second, otherwise to secure the ends of justice. The Hon'ble Supreme Court time and again has been reiterating that the power under Section 482 should be exercised sparingly with circumspection only when the court is convinced that on the basis of material on record allowing the proceeding to continue would be an abuse of process of the court and therefore to meet the ends of justice the proceeding should be quashed, under such circumstances the Court should be less hesitant in exercising its extraordinary jurisdiction conferred upon it. In **Gian Singh v. State of Punjab & Another** [2012 (10) SCC 303], the Supreme Court has held that the

power under Section 482, itself an inherent power, is of wide plenitude with no statutory limitation but it has to be exercised in accordance with the guidelines engrafted therein which is, first to prevent abuse of process of any court and second to secure the ends of justice. In the same judgment it was also further laid down by the Supreme Court that where in the given factual matrix of the case the possibility of conviction is remote and bleak and the continuation of criminal case will put the accused to a great oppression and prejudice. Extreme injustice would be caused to him by not quashing the criminal case despite the fact that the alleged victim herself does not want the accused to be prosecuted. The same view has further been reiterated in **B. S. Joshi & others v. State of Haryana & Anr.** [2003 (4) SCC 675] and **Narinder Singh & Ors. v. State of Punjab & Anr.** [2014 (6) SCC 466].

20. In the light of the aforesaid judicial pronouncements and the legal position, if we look into the statement of Respondent No.2 who had appeared before this Court in this case as well as she had appeared before the Division Bench in the habeas corpus petition filed by the Petitioner wherein she has categorically on oath stated that she she had voluntarily without any force and because of intimacy which got developed between her and the Petitioner, had taken a decision of marrying the Petitioner. That since the date of marriage, i.e., in the year 2013, they have been residing together as husband and wife and have also got children born from the said relationship and they want the matter to be laid to rest once and for all and they be permitted to stay peacefully henceforth. In the light of this statement made by the Respondent No.2 before the Division Bench of this Court in Writ Petition (Habeas Corpus) No. 34 of 2014, in the opinion of this Court, no fruitful purpose would be served in further continuing with the criminal prosecution against the Petitioner when it is apparently writ large that the possibility of conviction would be very remote and bleak. There is no possibility whatsoever of the Respondent No.2 to appear before the Court below and make a statement against the Petitioner by which the Petitioner could be convicted and admittedly the Petitioner and Respondent No.2 have been staying together for last more than about 3½ years and have two children from the said marriage. It would be detrimental in the interest of the family also for putting the Petitioner to undergo the trauma of trial and remain present before the Court on

each date of hearing as an accused for a serious offence of kidnapping and rape. The birth certificate relied upon by the prosecution also is a document which was obtained subsequently to the filing of the complaint, which shows that it has been obtained only for the purpose of implicating the Petitioner. Whereas the Respondent No.2 in her possession has a live driving licence, voter ID card, Aadhar card etc., and all of which show that the Respondent No.2 was a major. The very fact that the Division Bench of this Court itself had permitted the Respondent No.2 to go along with Petitioner and stay together as a family, weakens the case of the prosecution in its entirety. Another aspect which further requires an indulgence of this Court for quashing of the criminal prosecution is the fact that, in addition to the order of the Division Bench in the habeas corpus petition, this Court also at the time of admitting the present petition had stayed the further prosecution of the case and by virtue of which the matter stands stalled for quite some time and as such the criminal case has not proceeded much. Taking a contrary view of permitting the Petitioner to be prosecuted further would be against the spirit of the order passed by the Division Bench and for this reason also, this Court is of the opinion that the FIR dated 10.11.2014 and the consequential criminal prosecution registered, both deserve to be quashed.

21. Accordingly, the present Criminal Misc. Petition is allowed. The FIR dated 10.11.2014 (Annexure P-1) registered as Crime No. 251 of 2014 at Police Station Tarbahar, District Bilaspur and the consequent criminal case which has been initiated on the basis of the said FIR, which is pending consideration before the learned Additional Sessions Judge (F.T.C.), Bilaspur both stand quashed. The Petitioner is discharged from the offences charged against him in FIR dated 10.11.2014 and in Crime No. 251 of 2014.

Sd/-
(P. Sam Koshy)
JUDGE