

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-15799-2017

Date of decision: 26.10.2017

Safi @ Shaffi

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr.Aman Deep Saini, Advocate for the petitioner

Mr.AS Dhaliwal, DAG, Punjab
assisted by ASI Ashwani Kumar

None for respondent Nos. 2 and 3

JITENDRA CHAUHAN, J.

The present petition under Section 482 of the Code of Criminal Procedure has been filed for quashing of First Information Report No.305 dated 20.12.2015 registered under Sections 363, 366A and 120-B of the Indian Penal Code and Section 8 of the Protection of Children from Sexual Offences Act, 2012 (for short 'Act 2012') at Police Station Dasuya, District Hoshiarpur.

Learned counsel for the petitioner contends that the present First Information Report was lodged at the behest of father of the victim. In CRM-M-42471-2015, victim -respondent No.3 appeared before this Court and recorded her statement that she was more than 18 years of age and had performed marriage with co-accused, Manu and

has been residing with her husband at her matrimonial home. The petitioner is brother of the main accused- Manu and the First Information Report qua the other co-accused already stands quashed on the basis of the statement of the alleged kidnapped person/ victim vide judgment dated 1.5.2017 passed in CRM-M-28202-2016.

On the other hand, learned State counsel has not been able to controvert the submissions made by learned counsel for the petitioner.

I have heard the learned counsel for the parties and perused the case file.

Hon'ble the Supreme Court in **S. Varadarajan Vs. State of Madras, 1965 AIR (SC)942**, has observed 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 circumstance 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.

10. It would, however, be sufficient if the prosecution establishes that though immediately prior to the minor leaving the father's protection no active part was played by the accused, he had at some earlier stage solicited or persuaded the minor to do so. In our opinion if evidence to establish one of those things is lacking it would not be legitimate to infer that the accused is guilty of taking the minor out of the keeping of the lawful guardian merely because after she has actually left her guardian's house or a house where her guardian had kept her, joined the accused and the accused helped her in her design not to return to her guardian's house by taking her along with him from place to place. No doubt, the part played by the accused could be regarded as facilitating the fulfillment of the intention of the girl. That part, in our opinion, falls short of an inducement to the minor to slip out of the keeping of her lawful guardian and is, therefore, not tantamount to 'taking'."

The FIR against the main accused, Manu and others has already been quashed by this Court observing that "as per the victim, she has performed marriage with petitioner No. 1 (main accused) and is leading a happy married life with him. Further, complainant/respondent No. 2 has reconciled with marriage of his daughter with petitioner No. 1 and has got no objection if the aforesaid FIR and proceedings emanating therefrom are ordered to be quashed." The petitioner is brother of Manu.

Hon'ble the Supreme Court in the case of **State of Haryana and others vs. Ch.Bhajan Lal and others** reported as **AIR 1992 Supreme Court 604** has held as under :-

“In following categories of cases, the High Court may in exercise of powers under Art.226 or under S.482 of Cr.P.C. may interfere in proceedings relating to cognizable offences to prevent abuse of the process of any Court or otherwise to secure the ends of justice. However power should be exercised sparingly and that too in the rarest of rare cases.

1)Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2)Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under S.156 (1) of the Code except under an order of a Magistrate within the purview of S.155(2) of the Code.

3)Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of

any offence and make out a case against the accused.

4)Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under S.155(2) of the Code.

5)Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6)Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7)Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

Where allegations in the complaint did constitute a

cognizable offence justifying registration of a case and investigation thereon and did not fall in any of the categories of cases enumerated above, calling for exercise of extraordinary powers or inherent powers, quashing of FIR was not justified.”

This Court in **Lakhwinder Singh vs. State of Punjab 2000**

(4) RCR (Crl.) 104, summed up the principles of law with regard to the scope of Section 482 Cr.P.C. while quashing of criminal proceedings:-

- (i) Wholesome jurisdiction conferred upon High Court by Section 482 Criminal Procedure Code cannot be narrowed, confined or put in a strait-jacket.*
- (ii) Inherent power can always be exercised by High Court to prevent abuse of process of court or to otherwise secure ends of justice. The only constraint on High Court is that since the power under Section 482 Criminal Procedure Code is very wide, it should be exercised with great care and caution.*
- (iii) High Court should not shy away from exercising this power when accused persons are being prosecuted in the guise of prosecution.*
- (iv) Proceedings initiated and continued for oblique motive or to wreak vengeance on other party are*

liable to be quashed. Proceedings are also liable to be quashed if even on the allegations being accepted in toto, prima facie no offence is made out.

(v) There is no absolute bar to the entertainment of a petition under Section 482 Criminal Procedure Code only on the ground that charges have been framed.”

Keeping in view the fact that the prosecutrix is happily residing at her matrimonial home out of her own sweet will; the FIR qua main accused has already been quashed by this Court and also in view of the ratio of law laid down in the aforesaid authorities, this Court feels that no useful purpose would be served in keeping the proceedings alive.

Accordingly, the present petition is allowed. First Information Report No.305 dated 20.12.2015 registered under Sections 363, 366A and 120-B IPC and Section 8 of Act 2012 at Police Station Dasuya, District Hoshiarpur and all consequential proceedings arising therefrom are hereby quashed qua the present petitioner. The petitioner is stated to be in custody. He be released henceforth, if not required in any other case.

26.10.2017
gsV

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned?
Whether reportable?

Yes / No
Yes / No