

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

CRM- M-20613 of 2016 (O&M)
Date of decision: 27.09.2017

Harvinder Singh @ Kaka

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. N.S. Lucky, Advocate for the petitioner(s).

Mr. N.K. Banka, DAG, Punjab
assisted by SI Gurwinder Singh.

Mr. P.K. Katiaria, Advocate for respondent No. 2.

JITENDRA CHAUHAN, J. (Oral)

This petition under Section 482 of the Code of Criminal Procedure has been filed for quashing of FIR No.49 dated 17.04.2015, registered under Sections 363 and 366-A of IPC, at Police Station Chattiwind, District Amritsar and all consequential proceedings arising therefrom.

Petitioner and prosecutrix are present in Court. Prosecutrix states that she has been happily residing at her matrimonial home. The couple has been blessed with a child.

Mr. P.K. Kataria, Advocate has filed power of attorney along with reply on behalf of respondent No.2. The same is taken on record. He states that earlier the petitioner and prosecutrix

approached the learned Sessions Judge, Amritsar for protection of their life and liberty showing them to be major. However, later on when the Court came to the conclusion regarding filing of false representation of date of birth, the interim protection was dismissed, vide order dated 19.08.2015. Thereafter, both of them have approached this Court for quashing of impugned order dated 19.08.2015 but the same was also ordered to be dismissed as withdrawn, by way of order dated 20.05.2016. Therefore, the learned counsel contends that the petitioner and prosecutrix have not approached this Court with clean hands and have concealed the factum of age.

Heard.

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'."*

Keeping in view the statement made by prosecutrix and in view of the ratio of law laid down in **S. Varadarajan's** case (supra), no case of kidnapping under Sections 363 and 366-A of IPC is made out, as the prosecutrix had reached the age of discretion and she is happily residing at her matrimonial home out of her own sweet will, this Court feels that no useful purpose would be served in keeping the proceedings alive.

Accordingly, the present petition is allowed. FIR No.49 dated 17.04.2015, registered under Sections 363 and 366-A of IPC, at Police Station Chattiwind, District Amritsar and all consequential proceedings arising therefrom are hereby quashed qua the present petitioner(s).

27.09.2017
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable:	Yes	No