

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

CRM-M-35861-2015

Date of decision: 14.11.2017

Hemant

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr.Ankur Lal, Advocate for the petitioner

Ms.Dimple Jain, AAG, Haryana assisted by
ASI Satbeer

None for respondent No.2

Respondent No.3 in person

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.262 dated 1.6.2015 registered under Sections 363 and 366A of the Indian Penal Code at Police Station Sector-55, Faridabad, District Faridabad.

Learned counsel for the petitioner contends that the sister of the complainant-respondent No.2, namely, Shabnam-respondent No.3, performed marriage with the petitioner with her own free will against the wishes of her family members and now both are cohabiting as husband and wife. She was 19 year old at that time. Now the petitioner and the prosecutrix- respondent No.3 are having two children.

The prosecutrix, who is present in person and duly identified by the Investigation Officer, states that she has performed marriage with the petitioner and now blessed with two children and she is happily residing with the petitioner at her matrimonial home.

Despite service, there is no representation on behalf of respondent No.2- complainant.

Heard.

The First Information Report in question was lodged by the brother of prosecutrix. The prosecutrix -respondent No.3 had solemnized the marriage with the petitioner with her own sweet will and presently they are living as husband and wife and have been blessed with two children.

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-respondent No.3 and in view of the ratio of law laid down in **S. Varadarajan's** case (supra), no case under Sections 363 and 366A 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. First Information Report No.262 dated 1.6.2015 registered under Sections 363 and 366A of the Indian Penal Code at Police Station Sector-55, Faridabad, District Faridabad and all consequential proceedings arising therefrom are hereby quashed qua the present petitioner.

14.11.2017
gsv

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No