

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

**CRM No.850 of 2017 IN/AND
CRM No.M-40241 of 2015
Date of decision: 03.02.2017**

Hari Shankar

....Petitioner

Versus

State of U.T., Chandigarh

....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. G.C. Shahpuri, Advocate
for the petitioner.

Mr. J.S. Toor, APP, U.T., Chandigarh.

REKHA MITTAL J.

On oral request made by counsel for the petitioner with no objection by counsel representing U.T., Chandigarh, the main case is taken up for hearing along with CRM No.850 of 2017.

By invoking Section 482 of the Code of Criminal Procedure (in short 'Cr.P.C.') the petitioner prays for quashing of FIR No.353 dated 13.07.2015 registered at Police Station Manimajra, Chandigarh for offence punishable under Sections 366 (A) and 372 read with Section 34 of the Indian Penal Code (in short 'IPC') and proceedings emanating therefrom.

Counsel for the petitioner has submitted that the petitioner is not named in the FIR registered at the instance of the police against 03 accused namely Dadu Mandi, Gopal Sarkar and Raju on the allegations that the aforesaid accused are indulging in illegal trade of bringing young girls from West Bengal and selling them for consideration. They are available at Kishangarh Chowk with a girl to

whom they want to sell. The allegations against the petitioner are that Dadu Mandi, one of the accused was interrogated and made a disclosure statement that he had sold one girl namely Radhika to the present petitioner. It is argued with vehemence that Radhika was never purchased by the petitioner from Dadu Mandi. Rather, the petitioner and Radhika performed marriage as per wish and desire of her parents, marriage was solemnized in March, 2014 and they are residing as husband and wife and out of wedlock one son namely Harmesh was born. It is further argued that Radhika cited as one of the witnesses by the prosecution has already been examined before the trial Court on 09.09.2016 wherein she had admitted the factum of marriage and birth of a son out of wedlock of the petitioner and Radhika. It is further argued that Radhika has failed to support the prosecution case and nothing tangible and material has been elicited when she was put questions in the form of cross-examination by the Public Prosecutor representing the State. It is argued with vehemence that keeping in view testimony of Radhika recorded before a Court of law coupled with the fact that statement of an accused made before the police indicting a co-accused unless corroborated by some other material, cannot form the basis for conviction, in the given facts and circumstances, criminal proceedings against the petitioner are liable to be quashed.

Counsel representing the U.T., Chandigarh has not disputed the factual assertions but submitted that disputed questions of fact and law are required to be left to be decided by the trial Court in due course of time.

I have heard counsel for the parties, perused the paperbook

and a copy of statement of Radhika made available during course of hearing by counsel for U.T., Chandigarh.

Indisputably, the petitioner was sought to be indicted in the crime on the basis of alleged disclosure by one of the accused namely Dadu Mandi, nominated as such in the FIR. As per the said disclosure statement, one girl brought from West Bengal was given to the petitioner by accepting money. Radhika, the girl stated to be given to the petitioner by Dadu Mandi was examined as a witness by the prosecution. There is no denial that Radhika did not support the prosecution version and was declared hostile at the request of Public Prosecutor representing the State. However, she has admitted the factum of her marriage with present petitioner and a child having been born out of the wedlock. A relevant extract from her testimony reads as follows:-

“I originally hail from village Sham Sunderpur, District Wardman, Kolkatta where my mother is residing. I was legally married to Hari Shankar present in the Court with consent of my parents in the month of March, 2015. I am living happily with my husband Hari Shankar and out of the said wedlock, I have one son namely Harmesh. I do not know and identify the accused Dadu Mandi, Gopal, Raju and Soni present in the Court.”

Counsel for the U.T., Chandigarh has fairly conceded that except the statement made by one of the co-accused during his custodial interrogation, there is no other evidence to connect the petitioner with the crime. Taking into consideration testimony of Radhika, the alleged victim of the crime, continuation of criminal

proceedings against the petitioner is nothing short of abuse and misuse of process of law, therefore, it would be in the interest of justice that criminal proceedings qua the petitioner are put to an end.

For the foregoing reasons, the petition is allowed, FIR No.353 dated 13.07.2015 registered at Police Station Manimajra, Chandigarh, under Sections 366 (A) and 372 read with Section 34 IPC and proceedings emanating therefrom are ordered to be quashed only qua the petitioner. However, nothing stated in this order shall cause prejudice to the prosecution in respect of trial pending against other accused.

(REKHA MITTAL)
JUDGE

03.02.2017
yakub

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No