

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

CRM No. M-5131 of 2014.

Date of Decision: 07.10.2017.

Gurpreet Singh and others

... Petitioners

Versus

State of Punjab and others

... Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Petitioner No.1 in person.
Mr. Akshay Sandhir, Advocate for
Mr. V.K. Sandhir, Advocate,
for the petitioners.

Mr. H.S. Grewal, Addl. AG, Punjab.

Mr. Vivek Sharma Bhanot, Advocate for
Mr. D.S. Pheruman, Advocate,
for respondent No.2.

None for respondent No.3.

JITENDRA CHAUHAN.J.(ORAL)

This is a petition under Section 482 of Code of Criminal Procedure for quashing of FIR No.58 dated 11.03.2013 registered under Sections 366, 363, 120-B read with Section 34 IPC at Police Station 'A' Division Amritsar.

It is contended that petitioner No.1 and respondent No.3 had solemnized marriage on 23.05.2013 against the wishes of parents of respondent No.2. The parents of respondent No.2 had lodged a false FIR against the petitioners. In fact, the couple had married with

their own free will which is evident from the factum of filing CRM M-33286 of 2013 whereby the couple sought protection of their life and liberty from this Court. It is further contended that after their marriage, the couple has been living a happy married life. The prosecutrix appeared before the Commissioner of Police, Amritsar and made a statement (Annexure P-3) that she was not kidnapped and that she had solemnized marriage with her free will and there was no kidnapping at all.

On the other hand, the learned State counsel submits that petitioner No.1 had abducted/kidnapped respondent No.3 and petitioner Nos. 2 & 3 had connived and conspired with petitioner No.1 and had provided help for the commission of crime. The date of birth of the prosecutrix, as per primary class certificate, is 19.07.1996 i.e. she was less than 18 years of age at the time of alleged marriage.

The learned counsel for the complainant/respondent No.2 toes the line of argument raised by the learned State counsel.

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/respondent No.3 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 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.58 dated 11.03.2013 registered under Sections 366, 363, 120-B read with Section 34 IPC at Police Station 'A' Division Amritsar and all consequential proceedings arising therefrom are hereby quashed qua the present petitioner(s).

07.10.2017.
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No