

CRM-M- 6572 of 2015

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In the High Court of Punjab and Haryana at Chandigarh

CRM-M- 6572 of 2015

Date of Decision:30.1.2017

Vikas Kumar and another

---Petitioners

vs.

State of Punjab and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. S.K.Arya, Advocate
for the petitioners

Mr. Mikhail Kad, AAG, Punjab

Mr. Anil Kumar Spehia, Advocate
for respondent No. 3 with
Nisha Devi in person

Rekha Mittal, J.

The present petition under Section 482 of the Code of Criminal Procedure has been preferred seeking quashing of FIR No. 43 dated 31.5.2013 (Annexure P-1) for offence punishable under Sections 363, 366-A and 120-B of the Indian Penal Code (in short "IPC") registered at police station, Kanwan, District Pathankot and proceedings emanating therefrom.

Counsel for the petitioners has submitted that Vikas Kumar Petitioner No. 1 and Nisha Devi respondent No. 3 daughter of Mohan Lal

respondent No. 2/complainant fell in love with each other but respondent No. 2 and his family members were not happy with this relationship being intercaste. Nisha Devi tried to convince her family members but they did not agree. She ran away from her masi's house, met petitioner No. 1 and they solemnized marriage on 27.5.2013 according to Hindu rites and rituals at Jai Durga Devi Mandir, Village and Post Office, Parora District Kangra (HP). It is further submitted that petitioner No. 1 and respondent No. 3 approached various authorities seeking protection to their lives and liberty at the hands of family members of Nisha Devi. It is vehemently argued that as Nisha, the alleged kidnapped girl performed marriage with petitioner No. 1 according to her free will and volition after attaining the age of more than 16 years and the matrimony has resulted in an addition of a member in the family aged about three months, continuation of criminal proceedings may create acrimony between the petitioners and respondent No. 3, therefore, the criminal proceedings may be put to an end. In support of his contention, he has relied upon judgments of the Delhi High Court *Rukshana and another vs. Govt. of NCT of Delhi and others* 2007(1) R.C.R.(Criminal) 542 and *Court On its Own Motion (Lajja Devi) VS. State* 2012 (4) R.C.R.(Civil)821. Further reference has been made to judgments of this Court *Ridhwana and another vs. U.T. Administration and others* 2008(4) R.C.R.(Criminal) 242 and *Gian Sarup vs. State of Punjab* 2013(4) R.C.R.(Criminal) 183.

There is no representation on behalf of respondent No. 2/complainant who was earlier being represented by a counsel. Respondent No. 2 failed to file any reply despite several opportunities granted for the

purpose. However, respondent No. 3, the alleged victim of the crime filed a short reply by way of affidavit dated 11.9.2015. She came present in the Court and her statement was recorded.

Counsel for the State has not disputed the factual assertions that Vikas Kumar petitioner No. 1 and Nisha Devi have performed marriage as stated in her affidavit filed in the Court and statement recorded in the Court but opposed the prayer for quashing of proceedings with the submission that the girl was less than 17 years of age at the time of alleged occurrence, therefore, a prima facie case for committing offence of kidnapping is made out against the petitioners.

I have heard counsel for the parties, perused the paper book and the judgments cited at bar.

Before adverting to the submissions made by counsel for the parties, it is appropriate to extract statement of Nisha Devi recorded before this Court, quoted thus:-

“I have already filed my reply by way of affidavit dated 11.9.2015 and own the contents thereof. I have performed marriage with Vikas Kumar (petitioner No. 1) on 27.5.2013 according to Hindu rites and rituals at Jai Durga Devi Mandir, Village and Post Office Paror, District Kangra (HP). I left my parental house according to my volition and thereafter performed marriage with Vikas Kumar. I am presently residing in my matrimonial home with the petitioners. There is a child aged about three months out of the wedlock. I am not on visiting terms with my parents at present. In case the criminal

proceedings lodged against the petitioners are allowed to continue, it may spoil my matrimonial life, therefore, FIR lodged against the petitioners may be quashed.”

Counsel for the State has not disputed that Nisha Devi was born in December 1996 and she was 16½ years old at the time of occurrence. The Delhi High Court in *Rukshana and another's case (supra)* has held that “admitted facts are that both the petitioners are living together after marrying each other. The marriage was solemnized on 6.5.2005. Since then, they are living together as husband and wife and leading blissful married life. They have been blessed with a male child who is still an infant. The only hurdle sought to be created by the respondents that she was 16½ years of age and, thus, minor at the time of commission of alleged offence. However, only because of this reason, I am of the considered view that in the facts and circumstances of this case, the petitioners cannot be denied the relief prayed for and it would be a fit case to quash the proceedings. This course of action is in the interest of not only the petitioner No. 1 but the petitioner No. 2 and her child as well. The prosecution is launched on the allegations that the petitioner No. 2 is the victim of the crime. However, if the petitioner No. 1 is now prosecuted and convicted, again it would be the petitioner No. 2 who shall become the victim in that eventuality. Additional victim would be small child. Both of them would be rendered without any financial support and the consequences can be disastrous. We should not compound her sufferings and miseries more so, when she willingly went with petitioner No. 1 and married him”. When the facts and circumstances of the present case are

examined in the light of observations recorded in *Rukshana and another's case (supra)*, it can be safely held that the said judgment squarely covers the controversy involved in the present case. In this view of the matter, I find merit in contention of the petitioners that continuation of criminal proceedings would not serve any purpose. On the contrary, it can create further implications for the married couple as well as the minor girl child born out of the wedlock. That being so, it would be in the interest of substantial justice that the criminal proceedings initiated at the instance of respondent No. 2 are put to an end. It further appears to the Court that as respondent No. 2 has realized that his daughter is leading a happy married life with petitioner No. 1, he did not opt to file any reply and contest the proceedings.

For the foregoing reasons, the petition is allowed, FIR No. 43 dated 31.5.2013 (Annexure P-1) for offence punishable under Sections 363, 366-A and 120-B IPC registered at police station, Kanwan, District Pathankot and proceedings emanating therefrom are ordered to be quashed.

(Rekha Mittal)
Judge

30.1.2017
paramjit

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