

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

Date of decision: 23.02.2017

1. CRR No.3150 of 2015 (O&M)

Dalip Singh

....Petitioner

Versus

State of Haryana and another

....Respondents

2. CRM-M No.4059 of 2016 (O&M)

Dalip Singh

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Aditya Sanghi, Advocate
for the petitioner (in both the petitions)

Mr. R.K. Doon, AAG, Haryana.

Mr. Lokesh Sharma, Advocate
for respondent No.2 (in CRR No.3150 of 2015)
for respondents No.2 and 3 (in CRM-M No.4059 of 2016)

REKHA MITTAL J.

This order will dispose of CRR No.3150 of 2015 “*Dalip Singh vs State of Haryana and another*” and CRM-M No.4059 of 2016 captioned “*Dalip Singh vs State of Haryana and others*” as these have emerged out of common proceedings pertaining to FIR No.257 dated 04.05.2015 for offence punishable under Sections 363, 323, 120-B, 506 and 201 of the Indian Penal Code (in short 'IPC'), Section 6 of the Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act') and Section 3 of the Scheduled Castes and the Scheduled

Tribes (Prevention of Atrocities) Act, 1989 (in short 'the 1989 Act') registered at Police Station Sector 5, District Gurgaon, Haryana.

1. CRR No.3150 of 2015

Counsel for the petitioner has submitted that on completion of investigation in the aforesaid FIR, challan was presented in the Court against the petitioner and one Neeraj son of Sh. Chote Lal. The trial Court vide order dated 17.08.2015 framed charge for commission of offence punishable under Sections 363, 323 and 506 IPC and Section 3(ii) of the 1989 Act against the petitioner whereas charge under POCSO Act has been framed against co-accused – Neeraj. It is further submitted that charge under Section 363 IPC has been framed on the allegations that he kidnapped the prosecutrix aged about 10 years, minor daughter of the complainant from her lawful guardianship and took her to Chennai in absence of the complainant. It is argued with vehemence that as the alleged kidnapped child is the real daughter of the petitioner, therefore, no prima facie case for committing offence punishable under Section 363 IPC is made out more particularly in the circumstances that there is no allegation raised by the complainant that she was appointed as a guardian of the minor by a Court of law.

Another submission made by counsel is that charge for committing offence punishable under Sections 323 and 506 IPC has been framed with regard to causing injuries to Hem Lata @ Hemlata – complainant and extending her threats at the time of an occurrence which took place at Gurgaon. It is further submitted that charge under Section 3 (ii) of the 1989 Act also pertains to intentional insult and intimidation of a female belonging to a Scheduled Caste. It is argued

that as the petitioner himself is a member of the Scheduled Caste, taking into consideration the provisions of section 3 of the 1989 Act, no offence under Section 3 of the 1989 Act can be said to be made out against the petitioner. It is prayed that order passed by the trial Court framing charge *qua* offence under Section 363 IPC and Section 3(ii) of the 1989 Act may be set-aside.

Counsel representing State of Haryana as well as the complainant have nothing to say in order to controvert the submissions made by counsel for the petitioner with regard to the alleged kidnapped child being the real daughter of the petitioner and the petitioner himself being a member of a Scheduled Caste.

I have heard counsel for the parties and perused the paperbook.

Be that as it may, it is undisputed position of the case that the alleged kidnapped person is the real daughter of the petitioner. Section 363 IPC provides for punishment for kidnapping. However, Section 361 IPC deals with kidnapping from lawful guardianship. A relevant extract from Section 361 IPC, germane to the controversy, reads as follows:-

“361. Kidnapping from lawful guardianship — Whoever takes or entices any minor under 16 years of age if a male, or under 18 years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.”

Counsel for the complainant has not disputed that the

petitioner was the lawful guardian of the minor at the relevant time and the mother has not been appointed as a guardian of the minor in preference to that of the father. As the petitioner himself was the lawful guardian of the alleged kidnapped girl, there is no question of the petitioner having taken or enticed the said girl out of keeping of the lawful guardianship without the consent of such guardian. In this view of the matter, I find merit in contentions of the petitioner that in the given circumstances, no offence punishable under Section 363 IPC is prima facie made out against the petitioner.

This brings the Court to offence under Section 3(ii) of the 1989 Act. Section 3 of the 1989 Act begins with the following words:-

“3. Punishment for offences of atrocities – (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

- (i) XXXX XXXX XXXX XXXX***
- (ii) XXXX XXXX XXXX XXXX***

Since there is no dispute between the parties that the petitioner himself is a member of a Scheduled Caste, he cannot be charged for committing an offence punishable under any of the Clauses of Section 3 of the 1989 Act. To attract the provisions of Section 3 of the 1989 Act, the person accused of the offence of atrocities against a member of a Scheduled Caste or a Scheduled Tribe must not be a member of a Scheduled Caste or a Scheduled Tribe. In this view of the matter, charge for offence under Section 3(ii) of the 1989 Act cannot be allowed to sustain and accordingly set-aside.

For the foregoing reasons, the petition is partly allowed and order dated 17.08.2015 passed by the trial Court framing charge for

commission of offence punishable under Section 363 IPC and Section 3(ii) of the 1989 Act is set-aside.

2. CRM-M No.4059 of 2016

Counsel for the petitioner has submitted that charge under Section 6 of the POCSO Act has been framed against co-accused namely Neeraj. It is further submitted that the order dated 17.08.2015 passed by the trial Court framing charge against the petitioner for commission of offence punishable under Section 363 IPC and Section 3(ii) of the 1989 Act has since been set-aside by this Court (in CRR No.3150 of 2015), the present petition seeking quashing of FIR on the basis of compromise may be allowed. Another submission made by counsel is that as dispute between the parties has been settled by way of compromise dated 25.01.2016 (Annexure P3), continuation of criminal proceedings on the basis of aforesaid FIR lodged at the instance of the complainant/respondent No.2 would be nothing but abuse and misuse of process of law at the cost of aggravating misery to the petitioner.

The petitioner has produced on record affidavit of the complainant dated 25.01.2016 (Annexure P2) with regard to settlement of dispute between the parties. A relevant extract from paras 3 and 4 of the affidavit reads as follows:-

“3. That Dalip Singh took our daughter to Chennai for the purpose of her eyes treatment. I was not aware about this earlier but now I have checked the treatment papers and my husband got my daughter treatment at Chennai. When I got to know about the whole situation from my daughter, there was a fight between me and my husband. I had a suspicion on him. But now I have

found that my husband was not aware about anything that happened with Mansi and he thought that I was lying. That time I was in a state of shock and was not able to handle the whole situation. Now I have done the whole investigation, enquiry and now I am sure that whatever happened with my daughter, my husband has no role in it. Therefore, I want from the list of accused in Mansi's case the name of Dalip Singh be removed.

4. That I shall have no objection if the FIR No.257 dated 04.05.2015, under Sections: 363, 323, 120-B, 506 and 201 IPC and 6 of Protection of Children from Sexual Offences Act, 2012, and 3 of SC&ST Act, Police Station Sector 5, Gurgaon, Haryana (Charges against Dalip Singh framed u/s 363, 323, 506 IPC and 3(ii) of SC&ST Act only) is quashed only qua Dalip Singh or he is acquitted/discharged of the allegations leveled against him since he has no knowledge or concern whatsoever with the whole incident.”

Not only this, Smt. Hem Lata @ Hemlata got recorded her statement dated 23.02.2017 and an extract therefrom reads as follows:-

Statement of Smt. Hem Lata @ Hemlata, daughter of late Sh. Ramji Lal, resident of House No.1138, Laxman Vihar, Sector 4, Gurgaon, Haryana.

FIR No.257 dated 04.05.2015 for offence punishable under Sections 363, 323, 120-B, 506 and 201 IPC, Section 6 of Protection of Children from Sexual Offences Act, 2012 and Section 3 of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 was registered at Police Station Sector 5, Gurgaon, Haryana against Dalip Singh and Neeraj at my instance. On completion of investigation, challan was presented in the Court. Dalip Singh is the natural father of Mansi. Dalip Singh has been charged for committing offence punishable under Section

363 qua kidnapping of his daughter and for offence under Sections 323, 506 IPC and Section 3(ii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 with regard to occurrence date 29.04.2015 that took place in Gurgaon. I have tendered my affidavit attested on 25.01.2016 and the same may be read as a part of my statement. I have got no objection if the criminal proceedings against Sh. Dalip Singh with regard to the offence charged against him by the Court below are ordered to be quashed on the basis of compromise.

RO&AC
23.02.2017

(REKHA MITTAL)
JUDGE

Counsel for respondents No.2 has conceded to the contentions raised by counsel for the petitioner that the parties have amicably resolved their differences.

I have heard counsel for the parties, perused the paperbook particularly affidavit of the complainant dated 25.01.2016 and her statement recorded before this Court.

Perusal of allegations in the FIR reveals that the present case squarely falls in the category of cases that can be quashed by the High Court, in exercise of its inherent power under Section 482 of the Code. Keeping in view authoritative enunciation of law laid down by Hon'ble the Supreme Court of India in **“Gian Singh vs State of Punjab and another”**, 2012(4) R.C.R. (Criminal) 543 and in the light of facts and circumstances of the present case, this Court is of the considered opinion that continuation of criminal proceedings would amount to abuse of process of law and it is expedient in the interest of justice that

criminal proceedings are put to an end.

Taking into consideration the peculiar facts and circumstances of the present case, the petition is allowed, FIR No.257 dated 04.05.2015 under Sections 363, 323, 120-B, 506 and 201 IPC, Section 6 of POCSO Act and Section 3 of the 1989 Act registered at Police Station Sector 5, Gurgaon, Haryana and proceedings emanating therefrom are ordered to be quashed, *qua* the petitioner.

(REKHA MITTAL)
JUDGE

23.02.2017
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No