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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(CRL) 122/2017

SMT KAJAL & ANR

..... Petitioners

Through: Mr. J.S. Arya, Advocate with
petitioners in person.

versus

STATE & ORS

..... Respondents

Through: Mr. Rajesh Mahajan, ASC for the
State with SI Madan Lal,
PS Mukherjee Nagar.
Mr. Amit Kumar, Adv. for R-2 &
R-3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **17.05.2017**

By the present petition invoking Article 226 of the Constitution of India and Section 428 of the Code of Criminal Procedure, 1973 (Cr.P.C.) prayer is made for quashing of the proceedings arising out of the First Information Report (FIR) No.936/2016 under Section 363 of the Indian Penal Code, 1860 (IPC) registered in Police Station Mukherjee Nagar on 03.12.2016 at the instance of the third respondent (first informant), who is the mother of the first petitioner.

As per the FIR, the first petitioner, one of the four daughters of the first informant was minor on the relevant date when she went missing, while her mother (first informant) was pre-occupied with the treatment of her husband (the second respondent), the father of the first petitioner. It further

appears that the first petitioner with the second petitioner had earlier approached Allahabad High Court by writ petition (civil) no.57874/2016 praying for protection and for ensuring their life and liberty, *inter alia*, contending that they were major and had married each other out of their own sweet and free will.

It is the submission of the petitioners that during the course of consideration of the said writ petition, under directions of the Allahabad High Court a radiological examination for ascertaining the age of the first petitioner was undertaken, the opinion given on 15.12.2016 whereupon was that she was above sixteen years and below eighteen years on the relevant date. It is conceded by the counsel for the petitioners that the matter before the Allahabad High Court was not pursued further. This is the reason why counsel states he is unable to come with copy of the final order that would have been passed in those proceedings.

By the petition at hand, the above noted submissions about both petitioners being major, having married each other voluntarily, have been reiterated. It appears that during her statement under Section 164 Cr.P.C. the first petitioner has given her version to such effect affirming that she has been living as lawfully wedded wife of the second petitioner.

The question of age of the first petitioner arose and against this backdrop, by order dated 03.03.2017 the Juvenile Justice Board was directed to conduct age determination inquiry. Copy of the report dated 15.03.2017 of the Juvenile Justice Board-I, Sewa Kutir Complex, Kingsway Camp, Delhi has been received and taken on record. It appears that during the course of inquiry, records of three educational institutions, one Royal Public

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School, Baraut, Baghpat, U.P., the others being Janta Inter College, Hilwari, Baghpat, U.P. and Digambar Jain Inter College, Baraut, Baghpat, U.P. have been collected by the investigating officer. The record of the first educational institution where the first petitioner was admitted on 04.07.2011 shows her date of birth to be 09.01.2004, whereas in the record of the two other educational institutions where she was enrolled on 02.07.2012 and July, 2015 respectively, her date of birth is recorded as 18.03.2003. The Juvenile Justice Board has set out reasons accepting her date of birth to be 09.01.2004.

The contention of the petitioners' counsel is that the record of the two colleges indicating her date of birth to be 18.06.2003 and the opinion of the radiologist, cannot be ignored. But, he fairly conceded that even if such opinion, or such other college records were to be taken into consideration, the fact would remain that the first petitioner was minor as on the date she appears to have left her home to go with the second petitioner, later to surface with the claim that both have married each other.

Issues of fact arise which better be left to be addressed after completion of the investigation by the police. At this stage it cannot be said that the case under investigation is unfounded. There is no case made out for quashing of the FIR. The contentions of the petitioners are preserved and may be urged at appropriate stage of the proceedings in the event of police submitting a report under Section 173 C.P.C. seeking prosecution.

The writ petition is disposed of with these directions.

The first petitioner was directed to be accommodated in Children's Home, Nirmal Chhaya in Tihar Complex as per the order dated 03.03.2017.

By order dated 31.03.2017, it was clarified that she would not be forced to meet her parents in case she was not interested in meeting with them.

Given the report of the Juvenile Justice Board as to the age of the first petitioner, and the material on which it is based as has been gathered thus far, it will be proper that the above-said arrangement should continue for the present till such time the Child Welfare Committee takes an appropriate decision in the matter in accordance with Juvenile Justice (Care and Protection of Children) Act, 2015.

The first petitioner thus shall be brought before the Child Welfare Committee on 18.05.2017. Ms. Deepali Singh, Welfare Officer of Children's Home for Girls-II, Nirmala Chhaya, Tihar Complex, where the first petitioner is presently accommodated, is present in court with her. She has been asked to do the needful in terms of the above directions. The investigating officer of the case shall also appear before the Child Welfare Committee tomorrow, i.e. 18.05.2017 for appropriate assistance making a detailed report of the background facts.

Copy of the order be given *Dasti* under the signature of Court Master.

R.K.GAUBA, J.

MAY 17, 2017
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