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

+ **W.P.(CRL) 1846/2016 & CrI.M.A.9584/2016**

GUDDU & ORS.

..... Petitioners

Through: Mr.M.A.Rahman, Mr.A.Kalam &
Mr.Moinuddin, Advocates

versus

STATE OF DELHI & ORS.

..... Respondents

Through: Ms.Anya Singh, Advocate for
Mr.Avi Singh, ASC for the State with
SI M.L.Meena PS Pul Prahladpur

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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30.10.2017

1. By way of the present petition filed under Article 226 of the Constitution of India read with Section 482 CrPC, the petitioners are seeking quashing of case FIR No.346/2012 under Section 363/366/34 IPC registered at PS Pul Prahladpur, Delhi.

2. Case FIR No.346/2012 under Section 363/366/34 IPC was registered at PS Pul Prahladpur on the basis of Statement made by Smt. Prabhawati, mother of the Prosecutrix who came to the Police Station on 17th November, 2012 to lodge a report about the missing of her daughter. As per the FIR, the Complainant informed the police that on 17th November, 2012, her daughter 'A' (name withheld to conceal her identity) aged about 15 years had gone to toilet at about 4.00 a.m. Her daughter was walking 5-6 steps

ahead of her and in haste she fell down in a ditch. There, two boys, namely, Daya Shankar @ Guddu and his brother, Urman Singh, aged about 20-22 years, who were already standing there, caught hold her daughter and when she raised alarm they shut her mouth and took her away. Thereafter, she lodged the report with the police giving the description of her daughter and suspecting Daya Shankar @ Guddu and his family members i.e. the Petitioners herein, who might have enticed away her daughter for the purpose of the marriage. The case FIR No.346/2012 under Section 363/366/34 IPC was registered and the accused was arrested. Later on, the accused was acquitted by the Court on 31st October, 2014 in case FIR No.294/12 under Section 376 IPC registered at PS Pul Prahlad Pur on the complaint of the prosecutrix.

3. The Prosecutrix was produced before learned MM and in her statement recorded under Section 164 Cr.PC, she stated that she fell in love with the Petitioner No.1 and came to know about her pregnancy in October, 2012. She informed her family and they gave beating to her. They forced her to get the pregnancy terminated. She was also threatened not to marry the petitioner No.1 otherwise both of them will be killed. Since she wanted to marry Guddu, she insisted the petitioner to marry her and that she had married Guddu on her own free will and had gone with him on her own without being threatened or induced by any other person.

4. During the pendency of proceedings, the Complainant - who is mother of the Prosecutrix has passed away which is duly verified by the police as well recorded in the order dated 3rd June, 2016.

5. In the case of *Court of its Own Motion (Lajja Devi) v. State 193 (2012) DLT 619* one of the questions framed was (Question no.4) – whether

the FIR under Section 363 IPC or even 376 IPC can be quashed on the basis of the statement of a minor that she has contracted the marriage of her own.

It was answered as under :

'Question No. 4

Whether the FIR under Section 363 IPC or even 376 IPC can be quashed on the basis of the statement of such a minor that she has contracted the marriage of her own?

46. This brings us to the anomaly with and in the Indian Penal Code. Consent below the age of 16 years is immaterial, except when the rape is committed by a male who is married to the girl. Section 376 IPC does not treat the rape committed by a husband on his wife above the age of 15 years as an offence. This certainly requires a relook. This provision is not in consonance with the PCM Act. Section 376 IPC is required to be rationalized and amended in consonance with the PCM Act, and it may be difficult to implement and effectively enforce the PCM Act otherwise. The question of age of consent for the purpose of Indian Penal Code is a larger issue, and not being a subject matter of the reference, has not been examined by us.

47. We often come across cases where girl and boy elope and get married in spite of the opposition from the family or parents. Very often these marriages are inter-religion, inter-caste and take place in spite of formidable and fervid opposition due to deep-seated social and cultural prejudices. However, both the boy and girl are in love and defy the society and their parents. In such cases, the courts face a dilemma and a predicament as to what to do. This question is not easy to answer. We feel that no straight jacket formula or answer can be given. It depends upon the facts and circumstances of each case. The decision will largely depend upon the interest of the boy and the girl, their level of understanding and maturity, whether they understand the consequences, etc. The attitude of the families or parents has to be taken note of, either as an affirmative or a negative factor in determining and deciding whether the girl and boy should be permitted to stay together or if the girl should be directed to live with her parents. Probably the last direction may be legally justified, but for sound and good reasons, the Court has option(s) to order otherwise. We may note that in many cases, such girls severely oppose and object to their staying in special homes, where they are not

allowed to meet the boy or their parents. The stay in the said special homes cannot be unduly prolonged as it virtually amounts to confinement, or detention. The girl, if mature, cannot and should not be denied her freedom and her wishes should not get negated as if she has no voice and her wishes are of no consequence. The Court while deciding, should also keep in mind that such marriages are voidable and the girl has the right to approach the Court under Section 3 of the PCM Act to get the marriage declared void till she attains the age of 20 years. Consummation of marriage may have its own consequences.

48. In case the girl is below 16 years, the answer is obvious that the consent does not matter. Offence under Section 376 IPC is made out. The chargesheet cannot be quashed on the ground that she was a consenting party. However, there can be special or exceptional circumstances which may require consideration, in cases where the girl even after attaining majority affirms and reiterates her consent.

49. Consummation, with the wife below the age of 15 years, is an offence under Section 375. No exception can be made to the said constitutional mandate and the same has to be strictly and diligently enforced. Consent in such cases is completely immaterial, for consent at such a young age is difficult to conceive and accept. It makes no difference whether the girl is married or not. Personal law applicable to the parties is also immaterial.

50. If the girl is more than 16 years, and the girl makes a statement that she went with her consent and the statement and consent is without any force, coercion or undue influence, the statement could be accepted and Court will be within its power to quash the proceedings under Section 363 or 376 IPC. Here again no straight jacket formula can be applied. The Court has to be cautious, for the girl has right to get the marriage nullified under Section 3 of the PCM Act. Attending circumstances including the maturity and understanding of the girl, social background of girl, age of the girl and boy etc. have to be taken into consideration.'

6. The petitioner and the prosecutrix are happily married and having three children. The complainant who was mother of the prosecutrix has expired. In the circumstances, no useful purpose would be served by

continuing the criminal proceedings against the petitioners, which will only be an exercise in futile and wastage of precious time of the Court. It is necessary to quash the criminal proceedings against the petitioners in exercise of inherent powers vested in this Court to enable the petitioners as well as the prosecutrix to settle in their life.

7. Accordingly, the petition is allowed and FIR bearing No.346/2012 under Sections 363/366/34 IPC registered at PS Pul Prahladpur, Delhi and all the proceedings arising therefrom are hereby quashed, leaving the parties to bear their own costs.

8. Order dasti.

PRATIBHA RANI, J.

OCTOBER 30, 2017

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