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

+ **W.P.(CRL) 23/2017**

SURAJ CHAUDHARY Petitioner

Through : Mr. Arpit Bhalla, Adv.

versus

THE STATE (GOVT OF NCT OF DELHI) & ANR Respondents

Through : Mr. Sanjay Lao, ASC with ASI
Devender Singh PS Jait Pur.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **06.03.2017**

Crl. M.A.122/2017 (Exemption)

Allowed, subject to all just exceptions. Application is disposed of.

W.P.(CRL) 23/2017

By way of present writ petition petitioner has prayed for quashing of FIR No.553/2016 under Section 363 IPC registered at police station Jait Pur on the complaint of respondent no.3. Respondent no.2 is the daughter of respondent no.3. She was found missing from her home, accordingly, respondent no.3 lodged the present FIR. He alleged in the FIR that petitioner had taken away his daughter (respondent no.2) by enticing her on 28th September, 2016 at about 7: 00 pm.

After the registration of FIR, petitioner and respondent no.2 jointly filed W.P.(Crl) 3034/2016 praying therein that they be granted police protection. Respondent no.3 was impleaded as respondent no.4 in the said

petition. Petitioner and respondent no.2 alleged therein that respondent no.2's mother and respondent no.3 had been threatening them of dire consequences for having married against their wishes. Respondent no.3 appeared in the said petition and made a statement that he and his wife had not threatened the petitioner and respondent no.2 nor they had any such intention to do in future. Accordingly, writ petition was disposed of with the directions to SHO PS Jait Pur (respondent no.3) case to ensure the safety of petitioner and respondent no.2.

Learned Additional Standing Counsel submits that statement under Section 164 Cr.P.C. of respondent no.2 has already been recorded by the learned Metropolitan Magistrate on 6th January, 2017; wherein respondent no.2 has given her age as 17 years and 6 months and has stated that she was in love with petitioner; since her family members were not agreeing for the marriage, she left the house of her own and has married petitioner on 13th October, 2016 at Arya Samaj Temple in Ghaziabad and since then, she is living with the petitioner.

Respondent no.2 is present in Court and submits that she left her house of her own free will and without any undue force, pressure or coercion, inasmuch as there was no enticement exercised by the petitioner.

She also submits that FIR may be quashed.

In Court on its own Motion (Lajja Devi) Vs. State, 2012 (3) JCC 2148, a full bench of this Court has held that marriage with a minor is not a void marriage. At best it is voidable at the instance of such minor. It has been further stated therein that FIR can be quashed in appropriate cases. In S. Varadarajan versus State of Madras AIR 1965 Supreme Court 942, it has been held that taking or enticing away a minor out of the keeping of a lawful guardian is an essential ingredient of the offence of kidnapping. In this case, no allegations of enticement against the petitioner have been levelled; rather, the statement of respondent no.2 under Section 164 Cr.P.C. shows that respondent no.2 had accompanied the petitioner of her own free will.

For the foregoing reasons, FIR No.553/2016 under Section 363 IPC registered at police station Jait Pur, which is at the investigation stage, is quashed.

Petition is disposed of in the above terms.

A.K. PATHAK, J.

MARCH 06, 2017/dk