

\$~38

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

+ CRL.M.C. 3875/2017 & Crl. M.A. no. 15653/2017

DURGESH & ANR.

..... Petitioners

Through :Mr. S.S. Hora and Mr. Z. Ahmad,
Advs.

versus

STATE (NCT OF DELHI) & ANR

..... Respondents

Through :Ms. Meenakshi Chauhan, APP with
SI Rajpal, P.S. Uttam Nagar for
respondent no. 1
Respondent no. 2 in person.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **19.09.2017**

On the complaint of father of respondent no. 2, present FIR No. 1286/2015 under Section 363 IPC was registered at Police Station Uttam Nagar. Subsequently, Sections, 366/368/376 IPC and Section 6 of the POCSO Act has been added. Charge-sheet has been filed in the aforesaid provisions. Age of the prosecutrix in the FIR has been mentioned as 16½ years. Admittedly, prosecutrix is above 18 years of age as of now. Prosecutrix (respondent no. 2) is present in Court and has been identified by SI Rajpal, P.S. Uttam Nagar. Respondent no. 2 says that she had left her

house with the petitioner no. 1 on 2nd October, 2015. She had proposed the petitioner no. 1 for marriage. They went to Lucknow. They got married there and started living as husband and wife. She also became pregnant. It also emerges from the documents placed on record that Radhey Shyam, father of respondent no. 2, had filed a writ petition of habeas corpus being W.P.(Crl.) no. 2531/2015 in this Court, wherein respondent no. 2 was produced. Even before the Division Bench, respondent no. 2 had stated that she had left her parental home of her own sweet will with Durgesh (petitioner no. 1). Respondent no. 2 also reiterated that she had married the petitioner no. 1. Even petitioner no. 1 stated that he had married the respondent no. 2. Accordingly, said writ petition was dismissed vide order dated 7th April, 2016 passed by the Division Bench, which reads as under:-

“The petitioner has filed the present writ petition under Article 227 of the Constitution of India seeking a writ of habeas corpus for production of his minor daughter. The minor daughter was produced in Court on 31.03.2016. We had interacted with the petitioner, his wife and also their daughter in the Chamber. Himanshi had made a statement before the Court that she left her parental home out of her own sweet will with Durgesh.

On the last date of hearing, we had directed production of Durgesh. We have also interacted with

Durgesh in the Chamber today. Durgesh submits that he had married Himanshi. Today again Himanshi has been produced by her parents. Himanshi again reiterate that she left her parental home out of own free will and she had married Durgesh. After marriage she and Durgesh were staying as husband and wife. Since Himanshi has been recovered and produced and is residing with her parents, the petition is not pressed.

The petition is accordingly dismissed as not pressed.”

Respondent no. 2 says that till she attained the age of majority, she stayed with her father. Thereafter, she has left her house and has joined the company of petitioner no. 1 with whom she had married. Petitioner no. 1 is also present in Court and confirms that he had married respondent no. 2. Photocopy of the Marriage Certificate issued by Arya Samaj Mandir, Jankipuram, Lucknow has been placed on record and original thereof has been perused. Respondent no. 2 submits that FIR may be quashed.

Since respondent no. 2 had accompanied the petitioner no. 1 of her own free will and without any inducement/enticement, the offence under Section 363 IPC otherwise is not attracted. As regards the offence under Section 376 is concerned, the same is also not attracted in view of exception 2 of Section 375 IPC.

Keeping in view the facts and circumstances of this case, as detailed

above, aforesaid FIR and the consequent proceedings emanating therefrom are quashed.

Petition is disposed of in the above terms. Miscellaneous application is disposed of as infructuous. Dasti.

A.K. PATHAK, J.

SEPTEMBER 19, 2017
r.bararia