

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

CRM-M-41077-2018

Date of decision:-9.10.2018

Gurdeep Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.Onkar Rai, Advocate
for the petitioner.

Mr.Dhruv Dayal, Sr.D.A.G., Punjab.

H.S. MADAAN, J.

This petition under Section 482 Cr.P.C. for quashing of FIR No.75 dated 23.6.2018, under Sections 363, 366, 376 IPC and Sections 3, 4 of POCSO Act, 2012, registered at Police Station Rahon, SBS Nagar along with ancillary proceedings has been filed by petitioner – Gurdeep Singh, being an accused in the said case.

Briefly stated, the facts of the case as per prosecution story are that the FIR in question was lodged by complainant Sarup Lal son of Jai Ram, resident of village Behloor Kalan, aged about 45 years, who in his statement got recorded with the police stated that he is a labourer by avocation having three children, two girls and a boy; that his daughter

the prosecutrix (name withheld to protect her identity in view of Section 228-A IPC and as per the directions given by the Hon'ble Apex Court in case titled State of Karnataka Vs. Puttaraja, 2004(1) RCR(Cri.) Supreme Court, 113 (SC) and referred to as *the prosecutrix*) having date of birth 28.12.2002, has been a student of 9th Class and on 10.6.2018, both his daughters had gone to Bhatti Complex Church at Rahon for prayer but then the prosecutrix did not come back; that younger sister of the complainant namely Santosh Kumari returned home and told the entire incident to her parents. In his statement, the complainant stated that he is of the firm view that Gurdeep Singh son of Ram Lubhayia, resident of village Makkowal Jabba, Police Station Kathgarh, District SBS Nagar had enticed and allured her daughter.

On the basis of that statement, formal FIR was registered. After completion of investigation, the matter was investigated. Accused was arrested in this case. The prosecutrix was recovered. She got her statement recorded with the police, wherein she stated that she is aged about 16-17 years having date of birth as 28.2.2002 and has studied up to 9th class; that on 10.6.2018 she along with her sister Santosh Kumari had gone to church at Bhatti Complex, Rahon and before completion of prayer, she without telling her sister came out and went along with her lover Gurdeep Singh as they had planned earlier, thereafter they resided together at various places, during the course of which, they made physical relations, which was so done with her consent. After completion of investigation and other formalities, challan was filed in the Court and trial against the accused is going on.

Notice of the petition had been issued to the respondents.

The respondent No.1 State is being represented by State counsel.

I have heard learned counsel for the parties besides going through the record.

It is contended by learned counsel for the petitioner that the matter has since been compromised between the parties, as such, the FIR and ancillary proceedings be quashed.

Though normally in cases where the offence is of personal type and not against the society and the offences, which are not heinous are allowed to be compromised but here the situation is different. The petitioner is alleged to have kidnapped a minor girl taking her out from the custody of her parents, then having sexual intercourse with her. The plea put forward that it was with consent of the prosecutrix does not help the petitioner in any manner, since consent of a minor is no consent in the eyes of law and in terms of birth certificate showing her date of birth as 28.12.2002, she was aged a little more than 15 years at the time of incident. Merely because to avoid the rigors of law, he is offering to contract marriage with the minor does not mean that the Court should concede that request and put its seal of approval on the said compromise, which is in violation of Section 5 of the Hindu Marriage Act, which provides that the minimum age for a girl to get married is 18 years and the prosecutrix is less than that age.

Learned State counsel has referred to citation *Shimbu and another Versus State of Haryana*, Criminal Appeal Nos.1278-1279 of 2013 arising out of SLP(Crl.) Nos.1011-1012 of 2012, wherein it was observed that rape is an offence against society and is not compoundable, therefore, sentence should not be reduced on the basis of

compromise. It was further observed that when an accused is convicted in a rape case, offer of the rapist to marry the victim or the victim is married and settled in life cannot be construed as special factors for reducing the sentence prescribed by the statute.

Though learned counsel for the petitioner has also referred to a citation passed by this Court in CRM-M-13716 of 2016 titled **Rizwan Saifi Versus State of Punjab and another** and CRM-M-46090 of 2017 titled **Kamaljit Singh @ Soni Versus Union Territory, Chandigarh and another** but in view of the ratio of the authority **Shimbhu and another** (supra), the compromise effected between the parties cannot form basis for quashing of the FIR and ancillary proceedings. The trial is going on, which is likely to conclude in near future.

The petition being without merit stands dismissed accordingly.

(H.S.MADAAN)
JUDGE

9.10.2018

Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No