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

+ **W.P.(CRL) 2352/2018**

SHAHZAD KHAN & ANR

..... Petitioners

Through: Mr Mahboob Alam Inayati, Advocate.

versus

THE STATE & ANR

..... Respondents

Through: Ms Nandita Rao, ASC for GNCTD.

SI Kiranpal, P.S. Jagatpuri.

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+ **W.P.(CRL) 510/2019**

SHAHZAD KHAN & ANR.

..... Petitioners

Through: Mr Mahboob Alam Inayati, Advocate.

versus

STATE & ANR

..... Respondents

Through: Mr Rajesh Mahajan, ASC with Ms Jyoti Babbar, Advocate for State.

SI Sumit, P.S. Jyoti Nagar.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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30.08.2019

1. The petitioners have filed the present petitions, *inter alia*, praying that FIR No. 207/2016 under Sections 363, 366, 376 of the Indian Penal Code, 1860 (IPC) and Section 8 of the Prevention of Children from Sexual Offences Act, 2012 (hereafter referred to as 'the POCSO Act') registered with P.S. Jagat Puri and FIR No. 406/2016 under Section 363 of the IPC

registered with P.S. Jyoti Nagar, be quashed.

2. Petitioner no.2 is the daughter of the complainant who had lodged the aforementioned FIRs. The complainant had reported that petitioner no.1 had forcibly abducted petitioner no.2 and had established physical relationship with her. The said incident was reported on 14.07.2016. Petitioner no.2, on the other hand, had filed a complaint against the complainant on 10.08.2016, alleging that the complainant (her father) was forcing her to marry an older man against her wishes.

3. Petitioner no.2 was medically examined on 17.08.2016 and the report submitted by the gynecologist does not indicate that any forcible physical act was committed against petitioner no.2's will. It is relevant to note that during her medical examination, petitioner no.2 had stated that she had married petitioner no.1 about four months prior to the said examination. Her statement under Section 164 of the Code of Criminal Procedure, 1973 (CrPC) was not recorded in view of petitioner no. 2's stand that she had gone with the petitioner no.1 voluntarily, without any coercion or force.

4. It appears that thereafter, petitioner no.2's father persuaded her to record a statement, which is contrary to her earlier stand. On 07.09.2016, petitioner no.2 made a statement, *inter alia*, alleging that petitioner no.1 had forcibly established sexual relationship with her.

5. On 08.09.2016, petitioner no. 2 ran away from the home of her uncle. On the same day, her father lodged a complaint which later converted into the second FIR (FIR No. 406/2016) lodged with P.S. Jyoti Nagar. However, petitioner no.2 resiled from her statement on 07.09.2016 and lodged another complaint against her father, *inter alia*, withdrawing all her allegations made

against petitioner no.1.

6. Thereafter, on 13.03.2018, another statement of petitioner no.2 under Section 164 of the CrPC was recorded, wherein petitioner no.2 once again changed her stand and reiterated her earlier stand that she had voluntarily gone with petitioner no.1 and had married him.

7. It is in the aforesaid context that the petitioners have filed the present petitions, seeking quashing of the said FIRs.

8. The petitioners have asserted in the present petition that they got married on 14.02.2017. Although it is stated that petitioner no.2 was a major on the date of her eloping with petitioner no.1 (that is, on 13.07.2016), the records indicate to the contrary. Petitioner no.2's birth certificate indicates that she was born on 10.07.2000. Although petitioner no.2 has attained the age of majority; she was, indisputably, a minor when she had eloped with petitioner no.1.

9. In view of the above, Ms. Nandita Rao, learned ASC appearing for the State, submitted that it would not be apposite to quash the said FIRs as the consent of petitioner no.2 to establish any sexual relationship with petitioner no.1 was not relevant. She also drew the attention of this Court to the Judgment of the Supreme Court in *Independent Thought v. Union of India and Anr.: (2017) 10 SCC 800*, wherein the Court had held that Exception 2 to Section 375 of the IPC is required to be read in consonance with the provisions of the POCSO Act.

10. It is pointed out that the said decision is applicable prospectively as expressly indicated by therein. Since the decision was rendered on 11.10.2017, it would not be applicable to any statutory offence which was

committed prior to the said date. It does not appear from the record that there is any allegation that petitioner no.1 had committed any offence after 11.10.2017.

11. Both the petitioners have attained the age of majority and they have been living as husband and wife since the past two years. The complainant has no grievance and it appears that the marriage between the petitioners is also socially accepted by the parents of petitioner no.2. Considering the above, this Court considers it apposite to accept the present petitions in the peculiar facts and circumstances of this case.

12. The petitions are allowed and the FIRs in question (FIR No. 207/2016 and FIR No. 406/2016) and all proceedings emanating therefrom, are quashed.

VIBHU BAKHRU, J

AUGUST 30, 2019

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