

CRM-M-31457-2020
Date of decision: 07.10.2020

MANJEET KAUR AND ANOTHER

.....Petitioners

Versus

STATE OF PUNJAB AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Ms. Satinder Kaur, Advocate
for the petitioners.

ARUN KUMAR TYAGI, J. (ORAL)

(The case has been taken up for hearing through video conferencing.)

1. The petitioners-**Manjeet Kaur** and **Harjeet Singh** have filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for quashing of FIR No. 146 dated 11.09.2020 (Annexure P-1) under Sections 363, 366 and 120-B of the Indian Penal Code, 1860 (for short 'the IPC') registered against petitioner No. 2 at Police Station City Jalalabad, District Fazilka.

2. The above said FIR was registered on statement of Shilo Bai. In her statement Shilo Bai alleged that her marriage took place with Kala Singh and she gave birth to three sons and one daughter. Her daughter Manjeet Kaur (petitioner No. 1) is educated upto Fifth Class and her age is twenty years. Her sister Bibo Bai and her husband had died. Harjeet Singh (petitioner No. 2) is grandson of her sister Bibo Bai.

Due to being her relative he used to come to her house. On 10th August

2020 at about 09.00 P.M. Harjeet Singh came to her house. He was served food and extended due courtesies. After some time her husband and sons left for their jobs in city Jalalabad. Her daughter Manjeet Kaur and Harjeet Singh were talking with each other in separate room. After finishing her household work she went to sleep in another room. At about 2 o clock when she got up she saw her daughter Manjeet Kaur and Harjeet Singh were not at home. Meanwhile, her son Sukhchain Singh and husband Kala Singh came back and told her that they saw Manjeet Kaur and Harjeet Singh going on motorcycle. The entire family thought that they had gone to city Jalalabad for some shopping. When they did not come they realized that Harjeet Singh had enticed Manjeet Kaur on the pretext of marrying her. Her daughter Manjeet Kaur had told her earlier that Harjeet Singh pressurized her to solemnize marriage with him but she refused. She had the belief that Balbir Singh, father and Jaswinder Kaur, mother and Paramjit Kaur, aunt of Harjeet Singh were also involved in abduction of her daughter.

3. Briefly stated, the petition has been filed on the averments that petitioner No. 1- Manjeet Kaur is aged 22 years and petitioner No.2- Harjeet Singh is aged 19 years. Petitioner No. 1 fell in love with petitioner No. 2 and left her house on 10.08.2020 and came to Moga at her own and made phone call to petitioner No. 2 and told him that she had left her house and asked him to come and pick her from bus stand otherwise she would die. Petitioner No. 2 borrowed car from his friend and rescued petitioner No. 1 who was sitting in one park. Thereafter, both the petitioners took shelter in the house of some friends relatives and solmenized marriage on the next day in temple but certificate of

marriage was not given by the priest as petitioner No. 2 was aged 19 years and 6 months at that time. The petitioners filed CRWP 7006 of 2020 titled as 'Manjeet Kaur and another Versus State of Punjab and others' for protection which was dismissed as withdrawn vide order dated 10.09.2020 as the Hon'ble Judge denied to give protection due to marriage being in contravention of the provisions of the Prohibition of Child Marriage Act, 2006. Thereafter, the petitioners filed CWP No. 15185 of 2020 which was dismissed as withdrawn vide order dated 23.09.2020 in view of the registration of the present FIR against petitioner No. 2. The petitioner No. 1 is major and she left her parental house voluntarily out of her own free will and petitioner No. 1 was not abducted by petitioner No. 2. Offences under Sections 363, 366 and 120-B of the IPC are not made out. The present FIR registered at the instance of mother of petitioner No. 1 is gross abuse of process. Therefore, the same may be quashed along with all consequential proceedings arising therefrom.

4. Notice of motion restricted to respondent No. 1 only.
5. Pursuant to supply of advance copy, Mr. Amit Mehta, Senior DAG, Punjab has appeared and accepted notice on behalf of the respondent No. 1.
6. I have heard learned Counsel for the petitioner and learned State Counsel and gone through the relevant record.
7. Learned Counsel for the petitioner has submitted that the petitioner No. 1 left her parental house out of her own free will and was not abducted by petitioner No. 2. Offences punishable under Section 363, 366 and 120B of the IPC are not made out. The impugned FIR

registered at the instance of her mother is gross abuse of the process and the same may be quashed along with all consequential proceedings arising therefrom.

8. In support of her arguments, learned Counsel for the petitioners has placed reliance on the judgments of Hon'ble Supreme Court in **CRA No. 1979 of 2013 titled as Ranjit Kaur @ Rani and others Vs. State of U.P. Decided on 24.02.2016**, **CRA No. 558 of 2014 titled as Shyam Veer Singh Vs. State of U.P. decided on 06.03.2014**, **CRA No. 966 of 1999 titled as Fazal Gaffar Khan and others Vs. State of West Bengal decided on 20.09.1999**, **Criminal Appeal No. 1142 of 2013 titled as Sachin Pawar Vs. State of U.P. decided on 02.08.2013**, **CRA No. 1331 of 2013 titled as Hardev Singh Vs. Harpreet Kaur and others decided on 07.11.2019**, **State of Haryana Vs. Ch. Bhajan Lal AIR 1992 SC 604** and **Satish Mehra Vs. State of N.C.T. of Delhi, AIR 2013 SC 506**.

9. On the other hand, learned State counsel has submitted that the impugned FIR was registered at the instance of mother of petitioner No. 1. Allegations made in the FIR make out offences punishable under Sections 363, 366 and 120-B of the IPC. The matter is under investigation. The petition is devoid of any merit and the same may be dismissed.

10. Sections 120-B, Sections 359 to 363 and 366 of the IPC which are relevant for the disposal of the present petition are reproduced as under :

120B. Punishment of criminal conspiracy.--(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous

imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence. (2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

359. Kidnapping.- Kidnapping is of two kinds : kidnapping from India, and kidnapping from lawful guardianship.

360. Kidnapping from India.--Whoever conveys any person beyond the limits of India without the consent of that person, or of some person legally authorized to consent on behalf of that person, is said to kidnap that person from India.

361. Kidnapping from lawful guardianship.--Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Explanation.-The words "lawful guardian" in this section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception.-This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

362. Abduction.--Whoever by force compels, or by any deceitful means induces any person to go from any place, is said to abduct that person.

363. Punishment for kidnapping.--Whoever kidnaps any person from India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

366. Kidnapping, abducting or inducing woman to compel her marriage, etc.--Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and whoever, by means of

criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable as aforesaid.

11. In the present case as per her Aadhar Card petitioner No. 1- Manjeet Kaur was born in the year 1998 and is aged 22 years. Even in the FIR her mother admitted petitioner No. 1 to be aged 20 years. Petitioner No. 1 fell in love with petitioner No. 2 and left her house on 10.08.2020 and came to Moga at her own and made phone call to petitioner No. 2 and told him that she had left her house and asked him to come and pick her from bus stand otherwise she would die. Petitioner No. 2 borrowed car from his friend and rescued petitioner No. 1 who was sitting in one park. Thereafter, both the petitioners took shelter in the house of some friends relatives and solemnized marriage on the next day in temple. As per his Aadhar Card date of birth of petitioner No.2- Harjeet Singh is 10.02.2001 and petitioner No. 2 was aged 19 years and 6 months at the time of solemnization of marriage with petitioner No. 1. In **CRA No. 1331 of 2013 titled as Hardev Singh Vs. Harpreet Kaur and others decided on 07.11.2019** Hon'ble Supreme Court held that male adults in the age group of 18 and 21 who marry female adults cannot be brought within the ambit of and punished under Section 9 of the Prohibition of Child Marriage Act, 2006. At the time of alleged occurrence, petitioner No. 1 was aged about 22 years. Even her mother Shilo Bai admitted petitioner No.1 to be aged 20 years at the time of lodging of the FIR. Petitioner No. 1 not being a minor at the time of alleged occurrence cannot be said to have

been kidnapped out of her lawful guardianship and offence punishable under Section 363 of the IPC is not made out. As petitioner No.1, being major fully conscious of what she was doing, left her parental house out of her own free will and asked petitioner No. 2 to take her with him and with her own free will solemnized marriage with petitioner No. 2, petitioner No. 2 cannot be said to have compelled by force or to have induced by any deceitful means petitioner No. 1 to leave her parental house and to have abducted her to compel her to marry him against her will. Consequently, offence under Section 366 of the IPC is also not made out. In the absence of the allegations made in the FIR satisfying the ingredients of Sections 363 and 366 of the IPC offence of conspiracy under Section 120 B of the IPC is also not made out.

12. In **State of Haryana and others Vs. Ch. Bhajan Lal and others (SC) : 1991 (1) RCR (Criminal) 383**, Hon'ble Supreme Court has observed as under:-

"107. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

5. Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

13. **In Varala Bharath Kumar v. State of Telangana, (SC) :**

2017(4) R.C.R.(Criminal) 113 Hon'ble Supreme Court observed as under:-

"7. It is by now well settled that the extraordinary power under Article 226 or inherent power under section 482 of the Code of Criminal Procedure can be exercised by the High Court, either to prevent abuse of process of the court or otherwise to secure the ends of justice. Where allegations made in the First Information Report/the complaint or the outcome of investigation as found in the Charge Sheet, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out the case against the accused; where the allegations do

not disclose the ingredients of the offence alleged; where the uncontroverted allegations made in the First Information Report or complaint and the material collected in support of the same do not disclose the commission of offence alleged and make out a case against the accused; where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, the power under Article 226 of the Constitution of India or under section 482 of Code of Criminal Procedure may be exercised.”

14. In view of the above referred judicial precedents and above discussed facts and circumstances of the case, the FIR in question, which does not satisfy the essential ingredients of Offences punishable under Sections 120 B, 363 and 366 of the IPC, is gross abuse of the process and continuation of the proceedings against petitioner No. 2 will subject him to great oppression and will result in grave miscarriage of justice. Therefore, FIR in question is liable to be quashed alongwith all consequential proceedings arising therefrom for preventing abuse of the process and securing the ends of justice. Reference for judicial precedents in support of this view may be made to **CRA No. 1979 of 2013 titled as Ranjit Kaur @ Rani and others Vs. State of U.P. Decided on 24.02.2016, CRA No. 558 of 2014 titled as Shyam Veer Singh Vs. State of U.P. decided on 06.03.2014 and Criminal Appeal No. 1142 of 2013 titled as Sachin Pawar Vs. State of U.P. decided on 02.08.2013** where in similar circumstances FIR/complaint was quashed by Hon'ble Supreme Court.

15. In view of the above discussion, the petition is allowed and FIR No. 146 dated 11.09.2020 (Annexure P-1) under Sections 363, 366 and 120-B of the IPC registered at Police Station City Jalalabad,

District Fazilka is quashed along with all consequential proceedings arising therefrom qua all the persons named therein.

07.10.2020
kavneet singh

(ARUN KUMAR TYAGI)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No