

CRM-M-36461-2020

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

**CRM-M-36461-2020 (O & M)
Date of decision: 17.11.2020**

Amarjit Singh

...Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Hardeep Singh, Advocate,
for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

Mr. Bikram Chaudhary, Advocate,
for respondents No.2 and 3.

HARNARESH SINGH GILL, J. (ORAL)

Case is taken up for hearing through video conferencing.

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Allowed as prayed for. Annexures R-1 and R-2 are taken on record, subject to all just exceptions.

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Through this petition, the petitioner seeks quashing of FIR No.218 dated 27.05.2020, registered at Police Station Sadar Ambala, District Ambala, under Sections 363 and 366-A IPC and Sections 4 and 12 of the Protection of Children from Sexual Offences Act, 2012, and all the consequential proceedings arising therefrom, on the basis of compromise dated 05.06.2020 (Annexure P-2) arrived at between the parties.

Learned counsel for the petitioner contends that the petitioner and respondent No.3, stated to be minor, developed liking for each other

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and underwent marriage with each other on 26.05.2020 against the wishes of their parents regarding which they had sought protection of life and liberty from this Court by way of filing CRWP-3234-2020, which stood disposed of vide order dated 29.05.2020 with a liberty to them to approach the Superintendent of Police, Ambala, for protection. As a consequence, the marriage stood consummated. Learned counsel further contends that the petitioner and respondent No.3 have been living together happily as husband and wife since the solemnization of their marriage, and that respondent No.2-complainant, mother of the victim, has now compromised the matter with the petitioner, vide compromise deed dated 05.06.2020 (Annexure P-2).

In compromise deed dated 05.06.2020, it is stated by respondent No.2-complainant that her daughter had solemnized marriage with the petitioner of her own free will and without any coercion or pressure. It is also stated that respondent No.2 would not pursue the above-noted FIR registered against the petitioner and would give the statement in the Court in favour of the petitioner at the time of quashing of FIR.

Vide order dated 06.11.2020, this Court had directed respondents No.2 and 3 to tender the affidavit regarding the compromise with the petitioner and also directed the parties to cause their presence through video conferencing.

In pursuance thereof, respondents No.2 and 3, who are present in the office of Mr. Bikram Chaudhary, Advocate, have joined the proceedings through video conferencing. Respondent No.2, the author of

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the FIR, while interacting with the Court, admits the factum of solemnization of marriage by her daughter with the petitioner and the compromise having been effected with the petitioner. She states that in view of the said development, she does not want to pursue the above-noted FIR. The affidavits (Annexures R-1 and R-2) have been tendered by respondent No.2-Santosh Rani (author of the FIR) and Mukhtiar Singh (father of the petitioner) stating that they have accepted the marriage of the petitioner and respondent No.3, who are now living happily as husband and wife.

The learned State counsel does not dispute the factum of compromise effected between the private parties, but states that respondent No.3 is minor.

I have heard learned counsel for the parties and gone through the record.

Respondent No.3 is a minor girl. Under the Guardians and Wards Act, 1890, though the parents are the legitimate legal guardians and since it is a voidable marriage in terms of Section 5 of the Hindu Marriage Act, 1955, but the fact remains that the couple has chosen their life partner. In that eventuality, Section 25 of the Guardians and Wards Act, 1890, stipulates that the welfare of the ward is of paramount importance, which cannot be ignored. Even for the sake of repetition, it will not be out of place to mention here that both of them developed liking for each other and underwent marriage with each other against the wishes of their parents. Thus, it cannot be said that there is any element of taking away or enticing her.

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In the case titled as '*Jitender Kumar Sharma versus State and another, WP (CRL) 1003/2010*', decided on 11.8.2010 by a Division Bench of Delhi High Court, the couple was minor and had performed marriage against the wishes of the parents of girl Poonam, who was aged 16 years whereas Jitender was 18 years of age. It would be relevant to reproduce relevant paras of the said judgment, which read as under:-

“22. A reading of the 1890 Act and the 1956 Act, together, reveals the guiding principles which ought to be kept in mind when considering the question of custody of a minor hindu. We have seen that the natural guardian of a minor hindu girl whose is married, is her husband. We have also seen that no minor can be the guardian of the person of another minor except his own wife or child. Furthermore, that no guardian of the person of a minor married female can be appointed where her husband is not, in the opinion of the court, unfit to be the guardian of her person. The preferences of a minor who is old enough to make an intelligent preference ought to be considered by the court. Most importantly, the welfare of the minor is to be the paramount consideration. In fact, insofar as the custody of a minor is concerned, the courts have consistently emphasized that the prime and often the sole consideration or guiding principle is the welfare of the minor.

23. In the present case, Poonam is a minor Hindu girl who is married. Her natural guardian is no longer her father but her husband. A husband who is a minor can be the guardian of his minor wife. No other person can be appointed as the guardian of Poonam, unless we find that Jitender is unfit to act as her guardian for reasons other than his minority. We also have to give due weight and consideration to the preference indicated by Poonam. She has refused to live with her parents and has categorically expressed her desire and wish to live with her husband, Jitender. Coming to Poonam's welfare which is of paramount importance, we are of the view that her welfare would be best served if she were to live with her husband. She would get the love and affection of her husband. She would have the support of her in-laws who, as we have mentioned earlier, welcomed her. She cannot be forced or compelled to continue to reside at Nirmal Chhaya or some other such institution as that would amount to her detention against her will and would be violative of her rights guaranteed under [Article 21](#) of the Constitution. Neetu Singh's case (supra) is a precedent for this. Sending her to

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live with her parents is not an option as she fears for her life and liberty.”

Accordingly, in ***Jitender Kumar Sharma***'s case (supra), two FIRs i.e. FIR under Section 363/376 IPC and FIR under Sections 363/506 IPC, were quashed.

As per the proposition of law laid down in ***State of Haryana and others versus Ch. Bhajan Lal and others, 1992 AIR 604***, powers under Section 482 Cr.P.C. can be exercised in exceptional circumstances.

In the above-noted FIR got registered on the complaint of respondent No.2, age of respondent No.3 is stated to be around 18-years. Keeping in view the fact that after solemnization of marriage, the petitioner and respondent No.3 are residing together as husband and wife, coupled with the fact that respondent No.2-complainant states that she does not want to pursue the above-noted FIR, this Court finds that no useful purpose would be served in allowing the criminal proceedings to continue.

Accordingly, the present petition is allowed. FIR No.218 dated 27.05.2020, registered at Police Station Sadar Ambala, District Ambala, under Sections 363 and 366-A IPC and Sections 4 and 12 of the Protection of Children from Sexual Offences Act, 2012, and all the consequential proceedings arising therefrom, are quashed on the basis of compromise dated 05.06.2020 (Annexure P-2) arrived at between the parties.

17.11.2020

parveen kumar

(HARNARESH SINGH GILL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No