

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

123

CRM-M-3236-2021 (O&M)
Date of decision: 04.03.2021

SATNAM SINGH

.....Petitioner

Versus

STATE OF PUNJAB AND ORS

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Parveen Sharma, Advocate
for the petitioner.

ARUN KUMAR TYAGI, J (ORAL)

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

CRM-6121-2021

For the reasons mentioned in the application, the same is allowed and matriculation certificate of Harpreet Kaur is taken on record as Annexure P-5.

CRM-M-3236-2021

1. Petitioner-Satnam Singh has filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 for quashing of FIR No.128 dated 20.11.2020 registered under Sections 363 and 366 of the Indian Penal Code, 1860 (for short, "the IPC") at Police Station Kheri Gandian, District Patiala along with all consequential proceedings arising therefrom.

2. The above said FIR was registered on complaint of Harbans Singh. In his complaint Harbans Singh alleged that on 19.11.2020 when he got up at about 2:00 a.m., he found his daughter missing from her bed. Her whereabouts were not known to anyone. When they searched Harpreet Kaur in the house, they came to know that all her clothes and documents were also missing from the Almirah.

He has the apprehension that his daughter Harpreet Kaur, aged 21 years

has gone somewhere with Satnam Singh.

3. Quashing of the abovesaid FIR is sought on the grounds that the petitioner and respondent No.3 (daughter of respondent No.2) fell in love with each other and started residing in live-in-relationship with their free will without pressure of anyone. The family members of respondent No.3 were not happy with the relationship and were extending threats to the petitioner on which the petitioner and respondent No.3 filed CRWP 9887-2020 before this Court for seeking protection of their life and liberty. Vide order dated 27.11.2020 this Court had directed Senior Superintendent of Police, Patiala to look into the grievances of the petitioners and take appropriate action to protect their life and liberty. Thereafter, the petitioner solemnized marriage with respondent No.3 on 22.12.2020 and the factum of marriage was brought to the notice of the Court in the above said petition. The counsel for respondents 4 to 15 suffered statement that there will be no harm to the life and liberty of the petitioners therein on which the petition was dismissed as withdrawn with liberty to approach respondents No.2 and 3 in case of apprehension of any danger from respondents 4 to 15. All the allegations levelled in the FIR are false and frivolous. The petitioner has not committed offences punishable under Sections 363 and 366 of the IPC. The FIR and consequential proceedings arising out of the same amount to abuse of process of the Court. Therefore, the same may be quashed.

4. Notice of motion.

5. Pursuant to supply of advance copy Mr. P.S. Walia, Asstt. A.G. Punjab has appeared on behalf of the respondent-State.

6. Mr. Vishal Goel, Advocate has appeared on behalf of respondent No.3 and filed his power of attorney through e-mail, print

out of which is taken on record.

7. In view of the facts and circumstances of the case, issuance of notice to respondent No.2 is considered to be unnecessary.

8. I have heard learned counsel for the petitioner, learned State counsel and learned counsel for respondent No.3 and gone through the relevant record.

9. 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 Sections 363 and 366 of the IPC are not made out against the petitioner. The impugned FIR registered at the instance of her father is gross abuse of the process and the same may be quashed along with all consequential proceedings arising therefrom. In support of his 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.**

10. Learned counsel for respondent No.3 has submitted that respondent No.3 was major at the time of registration of FIR and went

with the petitioner out of her own free will and subsequently solemnized marriage with him. Respondent No.3 was not abducted by the petitioner as there was no taking or enticing away of respondent No.3 by the petitioner. Respondent No.3 has no objection to quashing of the FIR.

11. On the other hand, learned State counsel has submitted that the impugned FIR was registered at the instance of father of respondent No.3. Allegations made in the FIR prima facie make out offences punishable under Sections 363 and 366 of the IPC. The matter is under investigation. The petition is devoid of any merit and the same may be dismissed.

12. Sections 359 to 363 and 366 of the IPC which are relevant for the disposal of the present petition are reproduced as under :

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.

13. In the present case FIR was registered on complaint of respondent No.2 father of respondent No.3 on the allegations that respondent No. 3 had been enticed/taken away by the petitioner. As per matriculation certificate respondent No.3 was born on 03.05.2020 and was aged more than 20 years at the time of alleged occurrence. Even in his complaint made to the police her father-respondent No.2 admitted respondent No.3 to be aged 21 years at the time of lodging of the FIR. Respondent No.3, 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. Respondent No.3, being major and fully conscious of what she was doing, left her parental house out of her own free will and accompanied the petitioner and with her own free will solemnized marriage with the petitioner. Consequently, respondent No.3 cannot be said to have been

compelled by force or to have been induced by any deceitful means to leave her parental house. Apprehending danger to their life and liberty, the petitioner and respondent No.3 filed CRWP No. CRWP 9887-2020 titled as Harpreet Kaur and another versus State of Punjab on the averments that respondent No.3 had gone with the petitioner out of her own free will. In the course of hearing of the above said petition respondent No.3 also subsequently stated that she had solemnized marriage with the present petitioner out of her own free will. In these facts and circumstances of the case the petitioner can not be said to have abducted respondent No.3 for compelling her to marry the petitioner against her will. Consequently, offence under Section 366 of the IPC is also not made out.

14. 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 noncognizable 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."

15. 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.”

16. 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 363 and 366 of the IPC, is gross abuse of the process and continuation of the proceedings against the petitioner 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.

17. In view of the above discussion, the petition is allowed and FIR No.128 dated 20.11.2020 registered under Sections 363 and 366 of the IPC at Police Station Kheri Gandian, District Patiala is quashed along with all consequential proceedings arising therefrom.

04.03.2021
vishal

(ARUN KUMAR TYAGI)
JUDGE

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