

PARVEJ @ FARID

.....Petitioner

Versus

THE STATE OF HARYANA AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGIPresent : Mr. Vipul Aggarwal, Advocate
for the petitioner.Ms. Geeta Sharma, DAG, Haryana
for respondent No.1-State.

None for respondent No.2

Ms. Sunita Gupta, Advocate
for respondent No.3.

ARUN KUMAR TYAGI, J. (ORAL)

1. The petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for quashing of the FIR No. 634 dated 29.12.2020 registered under Sections 120-B, 363 and 366-A of the Indian Penal Code, 1860 (for short 'the IPC') at Police Station Nuh, District Nuh and all subsequent proceedings arising therefrom.

2. The above said FIR was registered on statement of respondent No.2-Javed uncle of respondent No.3-Sahabi. In his statement Javed alleged that on 29.12.2020 at about 12:00/1:00 p.m., Parvej @ Farid (the petitioner) was standing near the road with D-zire car. His niece Sahabi aged about 14/15 years was walking ahead of him at the distance of about one acre. The petitioner opened the gate of the car, forcibly threw his niece Sahabi in the car and kidnapped her.

Besides the petitioner, two unidentified persons were also sitting in the car. On raising of alarm the petitioner along with his companions drove away the car at a fast speed. His niece had been kidnapped in connivance with Suban, Ramjan, Sahun and Mubbi. When he along with his family members went to the house of Suban then they threatened them that if they took any legal action against them, they would be killed.

3. The petition has been filed on the averments that the petitioner, aged about 34 years and respondent No.3-Sahabi, aged about 18 years as per Aadhaar Card bearing No.371722782364, had performed marriage on 05.01.2021 as per Muslim Rites against the wishes of the family members of respondent No.3 and apprehending danger from them, the petitioner and respondent No.3 filed CRWP No. 187 of 2021 before this Court for protection of their life and liberty. Vide order dated 08.01.2021, this Court directed Superintendent of Police, Nuh to take appropriate action for protection of their life and liberty.

4. Learned State counsel has filed reply by way of affidavit of Sudhir Taneja, Deputy Superintendent of Police, HQ-Nuh, District Nuh on behalf of respondent No.1-State in the Registry which is also taken on record.

5. In view of the facts and circumstances of the case and nature of relief sought, presence of respondent No.2 is considered to be unnecessary and issuance of respondent No.2 is accordingly dispensed with.

6. Ms. Sunita Gupta, Advocate, who appeared on behalf of

respondent No.3 on 27.01.2021, has thereafter filed her power of attorney in the Registry which is taken on record. Learned counsel for respondent No.3 has no objection if the FIR in question is quashed.

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

8. Learned Counsel for the petitioner has submitted that respondent No.3 left her parental house and solemnized marriage with the petitioner out of her own free will. Respondent No.3 was not abducted by the petitioner. Offences punishable under Sections 120-B, 363 and 366-A of the IPC are not made out against the petitioner. The impugned FIR registered at the instance of uncle of respondent No.3 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 petitioner 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. In her arguments learned counsel for respondent No.3 has also supported the claim of the petitioner and prayed for quashing of the FIR in question

10. On the other hand, learned State counsel has submitted that the impugned FIR was registered at the instance of uncle of respondent No.3. Allegations made in the FIR make out offences punishable under Sections 120-B, 363 and 366-A of the IPC. The matter is under investigation. The petition is devoid of any merit and the same may be dismissed.

11. Sections 120-B, Sections 359 to 363, 366 and 366-A 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.

366A. Procurement of minor girl.—Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

12. In the present case FIR was registered on complaint of respondent No.2 uncle of respondent No.3 on the allegations that respondent No. 3 had been forcibly kidnapped by the petitioner. As per her birth certificate, respondent No.3 was born on 28.09.2002 and was aged more than 18 years at the time of alleged occurrence. Respondent

No.3, not being 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.187 of 2021 titled as 'Sahabi and another Vs. State of Haryana and others' 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-A of the IPC is also not made out. When offences under Sections 363 and 366-A of the IPC are not made out, offence under Section 120-B of the IPC is also not made out against the petitioner.

13. 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."

14. 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.”

15. 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 366A 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.

16. In view of the above discussion, the petition is allowed and FIR No. 634 dated 29.12.2020 registered under Sections 120-B, 363 and 366-A of the IPC at Police Station Nuh, District Nuh along with all consequential proceedings arising therefrom is quashed qua all the persons named therein.

08.03.2021

vishal

(ARUN KUMAR TYAGI)
JUDGE

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