

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

110

CRM-M-3492 of 2021
Date of Decision: 22.03.2021

Manjeet Choudhary

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Manoj Chahal, Advocate,
for the petitioner.

Mr. B. S. Virk, DAG, Haryana

AMOL RATTAN SINGH, J. (ORAL)

Case heard by video conferencing.

On 27.01.2021, the following order had been passed by this court (a
co-ordinate Bench):-

*“The matter has been taken up through video conferencing in
the light of COVID-19 pandemic.*

*Through the present petition, the petitioner is seeking quashing
of FIR No.157 dated 27.02.2019 under Section 346 of IPC, later on
added sections 363, 366-A IPC, registered at Police Station Sadar
Bhiwani, along with all consequential proceedings arising therefrom.*

*It is submitted by learned counsel for the petitioner that
aforesaid FIR was got registered at the instance of Vijay Kumar,
father of the victim, who married the petitioner and their marriage
was also registered vide registration certificate dated 11.10.2020 in
the office of Registrar General of Marriages, Babupara, Siliguri,
District Darjeeling, West Bengal. The petitioner and so called victim,*

who is daughter of the complainant are residing happily and they also have one daughter and, in fact, it is submitted that the case has been falsely got registered at the instance of the father of the victim, as he was not happy with the marriage so performed by them. Also, learned counsel for the petitioner submits that during the pendency of the bail application before the Court of learned Additional Sessions Judge, the victim had made appearance and has got recorded her statement which is as under:

“Stated that I have performed marriage with the applicant-accused Manjeet Chaudhary and I am happily married with him. I do not want to go to my parents as they used to torture me like anything and now have threatened that I and my husband shall be killed by them as and when they will find us. I have one daughter aged one year four months. The present case against my husband has been lodged by my father on totally false grounds. This case may be cancelled. I had left my house of my own due to torture of my parents and uncle and the applicant-accused had not allured me to leave my house.”

In view of the same, it is submitted by learned counsel for the petitioner that the aforesaid FIR may be quashed.

Notice of motion.

Ms. Harpreet Kaur, Assistant Advocate General, Haryana, accepts notice on behalf of respondent-State and seeks time to file written response.

In view of the request so made, now to come up on 19.02.2021 for filing of written response.

In the meanwhile, further proceedings in the ibid FIR No.157 dated 27.02.2019, qua petitioner, are stayed till the next date of hearing.

Thereafter, on 26.02.2021, the following order had been passed (after reproducing the earlier order):-

“Though no reply has still been filed by the State and Mr.

Surender Singh, learned AAG, Haryana seeks time to do so, it is to be noticed that learned counsel for the complainant in the FIR, i.e. the father of the girl who is alleged to have been kidnapped by the petitioner, admits that she has now attained majority, but further submits that at the time she went missing, she was allured/enticed away by the petitioner and therefore the FIR should not be quashed, and still further submits that her statement may be recorded before the learned trial court during the course of the trial, (though even the report under the provisions of Section 173 of the Cr.P.C. has not been submitted).

Learned State counsel submits that after the FIR was initially registered, in fact thereafter an offence for the commission of an offence punishable under the provisions of Section 6 of the Protection of Children from Sexual Offences Act, 2012, has been added in the FIR; though he also submits that as per his instructions the alleged victim has given birth to a child.

Learned counsel for the petitioner submits that even a second child has been born of the marriage of the petitioner with the 'alleged victim', and in any case she having made a statement not just before the learned Addl. Sessions Judge in the context of the petition filed by the petitioner under the provisions of Section 438 of the Cr.P.C., but also made a similar statement before the learned Magistrate in terms of the provisions of Section 164 of the said Code.

Hence, as a matter of fact, in the aforesaid circumstances, I would see absolutely no reason for the FIR to not be quashed, especially in view of the statement as has been reproduced in the previous order, made before the learned Addl. Sessions Judge by the alleged victim.

Yet, since learned counsel for the State seeks time to file a reply, the matter is adjourned to 22.03.2021.

If a reply is not filed by a gazetted officer at least 5 days before the next date of hearing, the Superintendent of Police concerned shall be summoned to court.

Interim order to continue.

To be shown in the urgent motion list.”

Thereafter, a reply has been filed on behalf of the respondent State by way of an affidavit of the DSP, Bhiwani, dated 04.03.2021, in which, even while admitting that two children have been born of the marriage of the petitioner with his wife (the girl allegedly kidnapped/enticed away), it has still been stated in the reply that since she was a minor at that stage, and the present petitioner had enticed her away, he had committed a serious offence and therefore it not being a compoundable offence in terms of Section 320 of the Cr.P.C., “the petition in hand cannot be quashed on the basis of the statement of the missing girl”, as she is under the undue influence of the present petitioner.

[Obviously, what the DSP means to say is that the FIR 'cannot be quashed'].

On the other hand, it is to be noticed that with the petition, Annexure P-3 thereto is a copy of an order passed by the learned Addl. Sessions Judge, Bhiwani, dated 08.12.2020 admitting the present petitioner to bail in terms of Section 438 of the Cr.P.C., wherein paragraph 5 states to the following effect:-

“5. In view of the above discussion and after careful perusal of the papers, this court is of the considered opinion that the applicant/accused is certainly entitled for the concession of anticipatory bail. The present case was registered on the complaint of the father of the alleged victim on 27.02.2019 under section 346 IPC. However, during investigation, it was found that she was allured by the applicant/accused hence, Section 346 IPC was deleted and Sections 363/366A IPC were added. Today, the complainant has not come present and the alleged victim has made statement in favour of the applicant/accused. She has stated that she herself had left her house due to the atrocities of the complainant and his brother. She has

performed marriage with the applicant/accused and has a daughter from his loins.”

Obviously, passing of the aforesaid orders is not denied by the learned counsel for the State. (It is not alleged that the copy of the order is forged/fabricated by the petitioner).

The date of birth of the petitioners' wife is stated to be 11.05.2002, even as per the copy of her birth certificate annexed with the reply of the DSP.

Mr. Chahal submits that, in fact the father in his complaint before the police stated that she was born on 28.04.2002, which is obviously 13 days prior to date given in the birth certificate, with Mr. Virk clarifying that 28.04.2002 in fact is shown to be her date of birth in her school certificates.

Thus, even on the date that she made a statement before the learned Addl. Sessions Judge, Bhiwani, on 18.12.2020, she was at least 7 to 8 months above the age of majority and consequently she has obviously validated her marriage with the petitioner upon attaining such age.

Hence, with the marriage in any case, even at the stage that it was performed, only being a voidable marriage and not a void marriage, in terms of Section 3 of the Prohibition of Child Marriage Act, 2006, it cannot be also said that since the minor has repudiated the marriage after her attaining the age of majority, she may have been enticed away by the petitioner while she was a minor.

In other words, she having affirmed the marriage, with two children also born thereof, there would be absolutely no reason, in my opinion, for continuation of the criminal proceedings against the petitioner.

Of course, had she repudiated the marriage at any stage, especially after

attaining the age of majority, that would have been a different situation, and the stand of the State may have been accepted.

Consequently, in view of all the circumstances, including of course even the fact that the father does not deny that the date of birth of his daughter is in April-May 2002, the petition is allowed, with FIR No. 0157, dated 27.02.20219, registered at Police Station Sadar Bhiwani, District Bhiwani, for the alleged commission of offences punishable under Sections 346 of the IPC (with Sections 363 and 366A of the IPC added), along with all proceedings emanating therefrom, is hereby quashed.

March 22, 2021
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(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes