

CWP-5994-2021 (O&M)

Through Video Conference

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

**CWP-5994-2021 (O&M).
Decided on: April 20, 2021.**

Sukhbir

.. Petitioner

VERSUS

State of Haryana and others

.. Respondents

*** * ***

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

*** * ***

**PRESENT Mr.Ankur Sidhar, Advocate,
for the petitioner.**

JASGURPREET SINGH PURI, J.

The present petition has been filed under Article 226 of the Constitution of India, seeking a direction in the nature of *mandamus* to the respondents to get investigated FIR No.382 dated 9.11.2020 (Annexure P-1) by any senior officer/Inspector General of Police or higher officer in a prompt, fair and impartial manner considering the representation dated 13.1.2021 (Annexure P-10) as well as legal notice Annexure P-11. Further prayer has been made for taking legal action against respondent nos.5 and 6 for favouring the accused persons. Yet another prayer has been made

CWP-5994-2021 (O&M)

seeking compensation of Rs.5 lacs from the respondents.

Brief facts of the case as submitted by the learned counsel for the petitioner as well as which are discerning from the averments made in the writ petition are that it has been alleged by the petitioner that his minor daughter who is allegedly 17 years of age went missing from their house on the intervening night of 8/9-11-2020. Thereafter, FIR No.382 dated 9.11.2020, under Section 346 IPC (Annexure P-1) was registered at Police Station, Hisar Sadar. Thereafter, the police authorities did not take any action and the petitioner approached the Superintendent of Police on 19.11.2020 and his daughter was found along with accused Nand Lal in Delhi and recovered. The aforesaid Nand Lal is neighbour as well as in Sah-pinda/prohibited relation of the daughter of the petitioner and they belong to the same *gotra*. The case of the petitioner was that his daughter has been enticed away by the accused and therefore action should have been taken against him under Sections 363, 366 and 366-A IPC as well as under the provisions of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act). Thereafter, the petitioner submitted representation dated 14.12.2020 to the Chairperson, Child Welfare Committee, Hisar and the District Child Protection Officer, Hisar, for protecting the minor girl vide Annexure P-4 and a legal notice Annexure P-5 was also sent to the police authorities. Thereafter, the petitioner filed writ petition in this Court in the nature of *habeas corpus* i.e. CRWP-10485-2020 and this Court vide order dated 15.12.2020 (Annexure P-6) directed the Superintendent of Police, Hansi, to look into the matter and in case the girl

CWP-5994-2021 (O&M)

was found in illegal custody of the private respondents of that case then she was ordered to be handed over to the petitioner in case she agrees for the same otherwise she is to be sent to some Government Protection Home.

The petitioner filed yet another writ petition i.e. CWP-1686-2021, seeking a direction to the respondents to get investigated the aforesaid FIR which was lodged by the petitioner regarding missing of his daughter. This writ petition was disposed of by this Court vide Annexure P-12 on 29.1.2021, and a direction was given to the Superintendent of Police Hansi, to look into the legal notice dated 16.1.2021 and to decide the same in accordance with law within a period of 15 days and also to consider the writ petition as fresh representation of the petitioner and take into consideration the same while looking into the legal notice. Thereafter, the petitioner filed a contempt petition i.e. COCP No.436 of 2021, allegedly for non-compliance of the aforesaid orders. This contempt petition was disposed of vide Annexure P-14 on 22.2.2021, in which it was brought to the notice of the Court that order dated 29.1.2021 has been complied with and speaking order dated 5.2.2021 has been passed and that no offence under Sections 363, 366 and 366-A IPC was made out against Nand Lal in view of the fact that date of birth of the daughter of the petitioner as per her matriculation certificate is 18.6.2002 and accordingly she was a major and she has also stated in her statement before the Chief Judicial Magistrate, Karnal that she had voluntarily gone with Nand Lal.

Along with the present petition, the petitioner has attached copy of the order passed by the Superintendent of Police, Hisar

CWP-5994-2021 (O&M)

vide Annexure P-13 vide which the representation of the petitioner was disposed of relying upon the report from the Deputy Superintendent of Police, Hansi which is attached along with the aforesaid order. In the aforesaid report, it has been stated that the daughter of the petitioner went with Nand Lal at 12 midnight on 8.11.2020 with her own consent and resided in the rented house and on the basis of the statement of the girl under Section 164 Cr.P.C. and the mark-sheet produced by the girl her custody was handed over to the sister of accused Nand Lal and cancellation report was also prepared. She has given a detailed description as to how she had gone away with aforesaid Nand Lal. When she was produced before the learned Illaqua Magistrate, she produced her mark-sheet with regard to her date of birth which has been shown as 18.6.2002 and the girl was major as per the same. Therefore, as per her consent the girl was handed over to the sister of accused Nand Lal and brother-in-law of Nand Lal and therefore, it cannot be said that the girl was in the illegal custody. Furthermore, the girl has not said anything against Nand Lal and others and therefore offence under Sections 363, 366 and 366-A IPC was not made out and no carelessness has been found in the investigation process.

The learned counsel for the petitioner has submitted that the investigation of the case has not been done in a proper manner and therefore, the same should be entrusted to some senior officer of the rank of Inspector General of Police so that fair and impartial investigation may be done. A perusal of the facts in the present case as well as the report of the inquiry officer on the basis of which the Superintendent of Police, Hansi

CWP-5994-2021 (O&M)

had decided the legal notice would show that the girl has stated before the learned Illaqua Magistrate that she has gone with accused of her own consent and she refused to go with her father and wanted to go with the accused. Furthermore, she also produced her 10th class mark-sheet with regard to her date of birth which is shown to be 18.6.2002. The alleged incident took place on 8.11.2020 and therefore, as per the 10th class mark-sheet, the girl was above the age of 18 years and was major. The police has, therefore, come to the conclusion that no offence under Sections 363, 366 and 366-A IPC, is made out and therefore, the representation made by the petitioner was filed. The learned counsel for the petitioner has referred to Annexures P-2 and P-3, to show that as per the birth certificate and the Aadhar card of the girl, her date of birth is 15.3.2003 and therefore, the girl was not major at that time of the alleged incident. However, on the contrary the girl herself has produced her 10th class mark-sheet before the learned Illaqua Magistrate to the effect that her date of birth is 18.6.2002 as per which she was major. Therefore, it is clear that disputed questions of facts are involved in the present case and this Court would not go into such kind of disputed questions of facts with regard to the age of the girl especially when in the matriculation certificate which was produced before the Illaqua Magistrate, the girl has been shown to be major. So far as prayer of the petitioner with regard to getting the case investigated by a police officer of the rank of Inspector General of Police is concerned, the same would not be sustainable in view of the fact that the learned counsel for the petitioner has

CWP-5994-2021 (O&M)

not been able to show as to how the police has failed to exercise its power in a reasonable manner or that police has acted in an arbitrary or partial manner.

Therefore, considering the totality of the circumstances, I do not deem it fit and appropriate to interfere by invoking the extra-ordinary jurisdiction under Article 226 of the Constitution of India. Consequently, the present writ petition is dismissed. However, the petitioner shall be at liberty to avail any of the alternative remedies available to the petitioner in accordance with law.

There shall be no order as to costs.

April 20, 2021.
raj arora

JASGURPREET SINGH PURI)
JUDGE

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