

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

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CRM-M-13845-2021

Date of decision: 26.03.2021

Vikram

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Jasvir Singh Dhaliwal, Advocate for the petitioner.

ARUN KUMAR TYAGI, J (ORAL)

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

Petitioner-**Vikram** has filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 for quashing of FIR No.72 dated 10.03.2021 registered under Section 346 of the Indian Penal Code, 1860 (for short, "the IPC") at Police Station City Mahendergarh, District Mahendergarh (**Annexure P-1**) along with all consequential proceedings arising therefrom.

The above said FIR was registered on complaint submitted by respondent No.2-Surya Parkash to SHO Police Station City Mahendergarh, who alleged in the complaint that his daughter Ritu, who is aged 23 years and is pursuing B.Ed., had gone to Kanina College PKSD to receive degree and had not returned and he had doubt that she had been wrongfully confined by Vikram (the petitioner). His daughter may be searched and got recovered.

The petition has been filed on the averments that the petitioner and Ritu, daughter of respondent No.2-complainant, fell in

love and solemnized marriage on 10.03.2021 in Arya Smaj Mandir at Delhi against the wishes of respondent No.2-complainant and his other family members. In view of apprehension of danger to their life and liberty, the petitioner and Ritu filed CRWP-2705-2021 titled as 'Ritu and another Vs. State of Haryana and others' for protection of their life and liberty which was disposed of by this Court vide order dated 18.03.2021. Respondent No.2-complainant got the above said FIR registered against the petitioner to falsely implicate him in criminal case. The allegations in the FIR do not satisfy the essential ingredients of Section 346 of the IPC and do not make out offence punishable under Section 346 of the IPC. The FIR being abuse of process of law may be quashed.

Notice of motion.

Pursuant to supply of advance copy, Mr. Kirpal Singh Thakur, Assistant A.G., Haryana has appeared and accepted notice on behalf of the respondent-State.

Learned State Counsel has, on instructions from SI Manoj Kumar, submitted that the matter is under investigation and there are talks of compromise between the petitioner and respondent No.2-complainant.

In the course of hearing of the petition, Ritu daughter of respondent No.2-complainant was joined through WhatsApp video call and on being questioned Ritu has submitted that she is aged more than 22 years and is major. She went with the petitioner out of her own free will and solemnized marriage with him on 10.03.2021 at Arya Samaj Mandir, Delhi and filed protection petition which was disposed of by

this Court vide order dated 18.03.2021. She was not wrongly confined or illegally detained by anyone including the petitioner.

In the facts and circumstances of the case, ritual of issuance of notice to respondent No.2-complainant is considered to be unnecessary and is dispensed with.

I have heard learned Counsel for the petitioner, learned State Counsel and Ritu daughter of respondent No.2-complainant and gone through the relevant record.

Section 346 of the IPC provides as under:-

"346. Wrongful confinement in secret.—Whoever wrongfully confines any person in such manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person so confined, or to any public servant, or that the place of such confinement may not be known to or discovered by any such person or public servant as hereinbefore mentioned, shall be punished with imprisonment of either description for a term which may extend to two years in addition to any other punishment to which he may be liable for such wrongful confinement."

In the present case Ritu daughter of respondent No.2-complainant was born in the year 1998 and is aged more than 22 years. Respondent No.2-complainant lodged the above said FIR alleging that Vikram (the petitioner) had wrongfully confined her in secret at some place. Ritu has stated before this Court that she went with the petitioner out of her own free will and solemnized marriage with him on 10.03.2021 and that she was not wrongfully confined and illegally detained by anyone including the petitioner. In view of statement of Ritu made before this Court in the course of proceedings of the present case, the petitioner cannot be said to have wrongfully confined Ritu in secret and cannot be said to have committed offence punishable under

Section 346 of the IPC.

In *State of Haryana and others Vs. Bhajan Lal and others : 1991(1) R.C.R. (Criminal) 383* Hon'ble Supreme Court 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 non-cognizable 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.

*108. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; **that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint** and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.”* (emphasis supplied)

In Varala Bharath Kumar v. State of Telangana, (SC) :

2017(4) R.C.R.(Criminal) 113 Hon'ble Supreme Court observed as under:-

“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.”

In view of the above-referred judicial precedents and the

facts and circumstances of the case, continuation of the proceedings against the petitioner will be gross abuse of the process of law and will result in grave miscarriage of justice. Continuation of the same will put the petitioner to great oppression and extreme injustice will be caused to the petitioner if the FIR and all consequential proceedings are not quashed.

In view of the above, the petition is allowed and FIR No.72 dated 10.03.2021 registered under Section 346 of the Indian Penal Code, 1860 (for short, "the IPC") at Police Station City Mahendergarh, District Mahendergarh (**Annexure P-1**) is quashed along with all consequential proceedings arising therefrom against the petitioner.

26.03.2021

Vinay

(ARUN KUMAR TYAGI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes