

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 21st December, 2021

IN THE MATTER OF:

+ CRL.M.C. 1437/2021

RAJ KUMAR CHAURASIA

..... Petitioner

Through: Mr. Rajesh Anand, Mr. Anshuman Vashistha, Mr. Gaurav Adlakha, Mr. Pawan Yadav, Mr. Manjeet Gulliya, Mr. Abhijit Kumar, Ms. Harleen Kaur, Mr. Parth Chaturvedi & Mr. Vibhu Bhardwaj, Advocates.

versus

STATE (GOVT/ OF NCT OF DELHI) & ORS. Respondents

Through: Ms. Meenakshi Chauhan, APP for the State.
Ms. Rakhi Dubey, Advocate for the complainant.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This petition under Section 482 Cr.P.C is for quashing FIR No.38/2021 dated 07.002.2021 registered at Police Station Paschim Vihar East for offences under Section 363 IPC.
2. The instant FIR was registered on the complaint of one Chanda Devi W/o Jugal Mandal. It is stated that the complainant is a housewife and lives at C-405, Peeragarhi Camp, Paschim Vihar, East Delhi, along with her husband and six children, out of which four are girls and two are boys. It is stated that her youngest daughter "K" is studying in 11th standard. It is

further stated that on 06.02.2021 "K" went to school and did not return back. It is stated that "K" was born on 15.03.2003, she has wheatish complexion and her height is about 4'10". It is stated that on 06.02.2021 she had worn her school uniform. It is stated that the complainant apprehended that Raj Kumar Chaurasia (the petitioner herein) S/o Suraj Chaurasia R/o Swarup Nagar, would have kidnapped "K". On the said complaint FIR No.38/2021 dated 07.002.2021 was registered at Police Station Paschim Vihar East for offences under Section 363 IPC.

3. The petitioner has approached this Court for quashing of the abovementioned FIR.

4. Notice was issued on 23.06.2021. On 04.08.2021, Delhi High Court Legal Services Committee was requested to provide a counsel for the complainant. Ms. Rakshi Dubey, learned Counsel has appeared for the complainant.

5. Status Report has been filed. It is stated in the Status Report that "K" appeared before the Investigating Officer on 23.07.2021 through her counsel. It is stated that the Investigating Officer recorded her statement under Section 164 Cr.P.C. In her statement, "K" stated that she was in love with the petitioner herein but her parents were against the relationship and they used to beat her. She further stated that on 06.02.2021 she went to the petitioner herein at Azadpur Sabzi Mandi and they got married on 02.03.2021. She stated that she is happy with the petitioner herein and wants to reside with him and does not want to go with her parents. The school records were verified and the date of birth of "K" was found to be 15.03.2003, therefore, the date on which she went missing, her age was 17

years 10 months & 22 days and the date on which she got married to the petitioner herein her age was 17 years 11 months & 12 days.

6. Mr. Rajesh Anand, learned counsel appearing for the petitioner, contends that the facts disclose that the petitioner had not induced "K" and had not taken her out of lawful guardianship of her parents. He states that it was "K" who went to the petitioner and asked him to take her away from her parents. He, therefore, states that the offence of kidnapping from the lawful guardianship of the parents of "K" is not made out against the petitioner. The learned counsel for the petitioner places reliance on the judgment of the Supreme Court in S. Varadarajan v. State of Madras, (1965) 1 SCR 243.

7. *Per contra*, Ms. Meenakshi Chauhan, learned APP for the State, opposes the instant petition by contending that the petitioner has committed the offence of kidnapping. She states that the question as to whether the petitioner herein induced "K" or not is a matter of trial and cannot be decided at this juncture.

8. Ms. Rakhi Dubey, learned counsel appearing for the complainant, adopts the contentions made by the learned APP for the State and submits that in the facts of the present case, offence under Section 363 IPC is made out against the petitioner and only trial would decide as to whether the petitioner has committed the offence or not.

9. Heard Mr. Rajesh Anand, learned counsel for the petitioner, Ms. Meenakshi Chauhan, learned APP for the State, Ms. Rakhi Dubey, learned counsel for the complainant, and perused the material on record.

10. Even as per the case of prosecution, "K" went missing on 06.02.2021 and she appeared before the Investigating Officer on 23.07.2021 stating that she went to the petitioner and requested him to take her away from her

parents and the petitioner and "K" got married on 02.03.2021. "K" has refused to undergo medical examination and there is no allegation of an offence under Section 376 IPC. The material on record also shows that on 18.03.2021 "K" gave a letter to the SHO, Paschim Vihar, stating that she fell in love with the petitioner herein and on 06.02.2021 she voluntarily, without any pressure, went to meet him at Azadpur Mandi where she told the petitioner that she is being beaten up and ill treated by her parents because of the fact that she was in love with the petitioner and she requested the petitioner to take her away with him. It is stated that "K" pressurized the petitioner to take her with him and stated that she would be happy with him wherever he takes her. It is further stated that "K" warned the petitioner that if he refused to take her along with him, she would commit suicide. It is further stated that the petitioner herein and "K" got married on 02.03.2021 and at the time of marriage "K" was 17 years 11 months & 12 days old. It is stated that on 15.03.2021 "K" attained the age of majority and she is happy with the petitioner and wants to spend rest of her life with the petitioner.

11. Section 361IPC reads as under:

"361. Kidnapping from lawful guardianship.—Whoever takes or entices any minor under 1[sixteen] years of age if a male, or under 2[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."

12. The learned counsel for the petitioner has placed reliance on the judgment of the Supreme Court in S. Varadarajan v. State of Madras, (1965) 1 SCR 243. In the facts of that case, the prosecutrix - Savitri became friendly with the appellant therein(Varadarajan) who was her neighbour. The facts of that case reveal that on being questioned as to why Savitri meets the appellant therein, she stated that she wants to marry him. Savitri was admonished. It is stated that Savitri left her house and asked the appellant therein to meet her at a particular point. It is stated that they went to the Registrar's office and gave an application to get married and started making arrangements for the marriage. It is stated that parents of Savitri made efforts to search her and when she did not return a police complaint was lodged and FIR under Section 361 IPC was registered against the appellant therein. In the facts of that case, the short question which arose before the Supreme Court was as to whether Varadarajan, the appellant therein, has committed the offence of kidnapping or not. It is pertinent to mention here that in that case also the girl was nearly 18 years old. The Supreme Court, while disposing of that case, observed as under:

"9. It must, however, be borne in mind that there is a distinction between "taking" and allowing a minor to accompany a person. The two expressions are not synonymous though we would like to guard ourselves from laying down that in no conceivable circumstances can the two be regarded as meaning the same thing for the purposes of Section 361 of the Indian Penal Code. We would limit ourselves to a case like the present where the minor alleged to have been taken by the accused person left her father's protection knowing and having capacity to know the full import of what she was doing voluntarily joins the accused person. In such a case we do not think that the accused can be

said to have taken her away from the keeping of her lawful guardian. Something more has to be shown in a case of this kind and that is some kind of inducement held out by the accused person or an active participation by him in the formation of the intention of the minor to leave the house of the guardian.

10. It would, however, be sufficient if the prosecution establishes that though immediately prior to the minor leaving the father's protection no active part was played by the accused, he had at some earlier stage solicited or persuaded the minor to do so. In our opinion, if evidence to establish one of those things is lacking it would not be legitimate to infer that the accused is guilty of taking the minor out of the keeping of the lawful guardian merely because after she has actually left her guardian's house or a house where her guardian had kept her, joined the accused and the accused helped her in her design not to return to her guardian's house by taking her along with him from place to place. No doubt, the part played by the accused could be regarded as facilitating the fulfilment of the intention of the girl. That part, in our opinion, falls short of an inducement to the minor to slip out of the keeping of her lawful guardian and is, therefore, not tantamount to "taking".

14. The last case relied upon by the High Court is Ramaswami Udayar v. Raju Udayar [1952 MWN 604] which is also a case under Section 498 IPC. In that case the High Court has followed the two earlier decisions of that court to which we have made reference but in the course of the judgment the learned Judge has observed that it is not open to a minor in law to abandon her guardian, and that, therefore, when the minor leaves the guardian of her own accord and when she comes into the custody of the accused person, it is not necessary that the latter should be

shown to have committed an overt act before he could be convicted under Section 498. The learned Judge has further observed:

“A woman's free will, or her being a free agent, or walking out of her house of her own accord are absolutely irrelevant and immaterial for the offence under Section 498.”

Whatever may be the position with respect to an offence under that section and even assuming that a minor cannot in law abandon the guardianship of her lawful guardian, for the reason which we have already stated, the accused person in whose company she is later found cannot be held guilty of having taken her out of the keeping of her guardian unless something more is established.

19.After pointing out that there is an essential distinction between the words “taking” and “enticing” it was no doubt observed that the mental attitude of the minor is not of relevance in the case of taking and that the word “take” means to cause to go, to escort or to get into possession. But these observations have to be understood in the context of the facts found in that case. For, it had been found that the minor girl whom the accused was charged with having kidnapped had been persuaded by the accused when she had gone out of her house for answering the call of nature, to go along with him and was taken by him to another village and kept in his uncle's house until she was restored back to her father by the uncle later. Thus, here there was an element of persuasion by the accused person which brought about the willingness of the girl and this makes all the difference. In our opinion, therefore, neither of these decisions is of assistance to the State.”

13. In the facts of the present case, "K" was 17 years 11 months & 12 days old at the time of marriage which is less than one month below the age of majority. "K" lives in a Metropolitan city and has studied till 11th standard. She has categorically stated in her statement under Section 164 Cr.P.C that she was in love with the petitioner herein and her parents used to object to their relationship. The facts also reveal that it was "K" who went to the petitioner and virtually forced him to take her away from her parents. The petitioner has married "K" and is living happily with him. It, therefore, cannot be said that there was any kind of inducement by the petitioner and as stated by "K" in her statement under Section 164 Cr.P.C, there was no active participation by the petitioner in the alleged offence of kidnapping.

14. "K" was on the verge of attaining majority and it cannot be said that she was incapable of knowing as to what is good and what is bad for her. She desired to get married to the petitioner and went to the petitioner and expressed her desire and persuaded the petitioner to take her with him and get married. Therefore, in the facts of this case, there was no inducement by the petitioner.

15. The short question which arises, therefore, is whether this Court must exercise its jurisdiction under Section 482 Cr.P.C for quashing the FIR or not.

16. It is well settled that Section 482 Cr.P.C gives inherent powers to the High Court and the purpose of Section 482 Cr.P.C is to prevent the abuse of the process of law and more particularly, to secure the ends of justice. The opening words of Section 482 Cr.P.C "nothing in this Code" shows that Section 482 Cr.P.C is an over-riding provision. These words indicate that

none of the provisions of the Code limits or restricts the inherent powers of Section 482 Cr.P.C.

17. The purpose of Section 482 Cr.P.C is primarily to secure the ends of justice. In Gian Singh v. State of Punjab, (2012) 10 SCC 303, the Supreme Court has observed as under:

"55. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest. The full import of which is whenever anything is authorised, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorised in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. Ex debito justitiae is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists. The power possessed by the High Court under Section 482 of the Code is of wide amplitude but requires exercise with great caution and circumspection.

56. It needs no emphasis that exercise of inherent power by the High Court would entirely depend on the facts and circumstances of each case. It is neither permissible nor proper for the court to provide a straitjacket formula regulating the exercise of inherent powers under Section 482. No precise and inflexible guidelines can also be provided."

18. Similarly, in Rajiv Thapar v. Madan Lal Kapoor, (2013) 3 SCC 330, the Supreme Court has observed as under:

"30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to

determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:

30.1.Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

30.2.Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3.Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4.Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same

would not conclude in the conviction of the accused."

19. Applying the abovementioned principles to the facts of this case, this Court is of the opinion that "K", who was 17 years 11 months & 12 days old at the time of marriage, which is less one month below the age of majority, has taken a conscious decision to get married to the petitioner herein and has gone to the petitioner and persuaded him rather forced him to take her with him. The petitioner has married "K" and on attaining the age of majority "K" has gone to the Police Station and has informed about her whereabouts and has narrated the incident to the Police. "K" and the petitioner are happily married and to secure the ends of justice it is expedient that the instant FIR be quashed. Resultantly, FIR No.38/2021 dated 07.002.2021 registered at Police Station Paschim Vihar East for offences under Section 363 IPC and the proceedings emanating therefrom are hereby quashed.

20. Accordingly, the petition is disposed of along with the pending application(s), if any.

SUBRAMONIUM PRASAD, J

DECEMBER 21, 2021

Rahul