

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

(Sr. No. 268)

CRM-M No.12624 of 2021

Date of decision : 17.05.2022

Jamana Dass @ Chhotu

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL

Present : Mr. Gaurav Tyagi, Advocate for the petitioner.

Mr. Gaurav Bansal, AAG, Haryana.

Mr. A.P. Setia, Advocate for respondent No.2.

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DEEPAK SIBAL, J. (Oral)

The present petition has been filed under Section 482 Cr.P.C. for quashing of FIR No.243 dated 12.11.2019 registered under Sections 363, 366-A IPC (deleted later on) and Sections 366, 376(2) (n), 452 IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short – the POCSO Act) (added later on) at Police Station Sanoli, district Panipat.

In pursuance to the lodging of the impugned FIR the petitioner is being prosecuted for having enticed away and then raped the complainant's minor daughter.

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in this case as on 19.12.2019 the petitioner and the prosecutrix had got married against the wishes of the complainant

(prosecutrix's mother); on 12.08.2020 a child has also been born out of their wedlock; for the last about 2 ½ years the petitioner and the prosecutrix are living happily as husband and wife; the prosecutrix, while appearing before the Trial Court as PW-2, has specifically deposed that she is happily married to the petitioner and that she also bears his child.

Learned State counsel does not dispute that the prosecutrix as also her mother/complainant, while appearing before the Trial Court have admitted that the prosecutrix and the petitioner are married; for the last about 2½ years they are living together as husband and wife; they also having a child out of their wedlock and that they have been declared hostile.

Learned counsel appearing for the complainant also does not deny the afore submissions made on behalf of the petitioner.

In *K Dhandapani Vs. The State by the Inspector of Police* 2022 Live Law (SC) 477 the Supreme Court while setting aside the conviction of an accused under Section 5 and 6 of the POCSO Act observed as follows :-

“Dr. Joseph Aristotle S., learned counsel appearing for the State, opposed the grant of any relief to the appellant on the ground that the prosecutrix was aged 14 years on the date of the offence and gave birth to the first child when she was 15 years and second child was born when she was 17 years. He argued that the marriage between the appellant and the prosecutrix is not legal. He expressed his apprehension that the said marriage might be only for the purpose of escaping punishment and there is no guarantee that the appellant will take care of the prosecutrix and the children after this Court grants relief to him.

In the peculiar facts and circumstances of this case, we are of the considered view that the conviction and sentence of the appellant who is maternal uncle of the prosecutrix deserves to be set aside in view of the subsequent events that have been brought to the notice of

this Court. This Court cannot shut its eyes to the ground reality and disturb the happy family life of the appellant and the prosecutrix. We have been informed about the custom in Tamilnadu of the marriage of a girl with the maternal uncle.

For the aforesaid mentioned reasons, the conviction and sentence of the appellant is set aside in the peculiar facts of the case and shall not be treated as a precedent. The appeal is accordingly, disposed of. Pending application(s), if any, shall stand disposed of.

In case, the appellant does not take proper care of the prosecutrix, she or the State on behalf of the prosecutrix can move this Court for modification of this order.”

The Supreme Court has held that the afore quoted order be not treated a precedent. However, taking a cue from the observations made therein and in the light of the subsequent developments which have been taken place in the case in hand, this Court is of the opinion that prosecuting the petitioner for the alleged rape of his wife, his child’s mother, would unsettle not only his married life but also the prosecutrix and her child’s future especially when the prosecutrix and the complainant, while appearing in the petitioner’s trial which has ensued in pursuance to the impugned FIR, have categorically stated that the petitioner had not committed the offence he is accused of and admitted the fact that it is he who is prosecutrix’s husband as also her child’s father.

For the above reasons, in the peculiar facts of this case the impugned FIR is quashed. However, if the petitioner does not take care of the prosecutrix, she or the State on behalf of the prosecutrix, can move this Court for modification of this order.

17.05.2022

sunil yadav

**(DEEPAK SIBAL)
JUDGE**

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