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

% *Order pronounced on 24.05.2022*

+ CRL.M.C. 991/2022

HARI OM AND ORS.

..... Petitioners

Through: Ms. Sonali Karwasara & Ms. Vivek
Singh, Advs.

Versus

STATE & ANR.

..... Respondents

Through: Mr. Ravi Nayak, APP for the State.

CORAM:

HON'BLE MR. JUSTICE TALWANT SINGH

Talwant Singh, J.:

1. The present petition has been filed for quashing of FIR No. 0457/2017, PS Jaitpur, registered under Section 363 IPC and under Section 6 of Protection of Children from Sexual Offences Act, (POCSO) Act. The petitioner no.1 is the husband of the prosecutrix. Petitioner no.2 is sister of petitioner no.1 and petitioner no.3 is brother-in-law of petitioner no.1 and they have not been chargesheeted but they are shown in column 12 of the chargesheet submitted by the investigated agency.

1.1 The factual matrix given in the matter is that father of the prosecutrix lodged FIR No. 457/2017 under Section 363 IPC, registered at PS Jaitpur. The contention of the petitioner No. 1 is that prosecutrix had on her own had eloped with petitioner no.1 and at that time she had disclosed her age to be 18 years. Petitioner no.1 and respondent no.2/prosecutrix got married in Lucknow and they consummated the marriage and a female child was born out of the said marriage on 31.08.2018.



1.2 On 20.06.2018, petitioner no.1 and prosecutrix/respondent no.2 came back to Delhi and when they went to the house of the petitioner no.1, they came to know about lodging of the FIR by the father of the prosecutrix. The statement of the prosecutrix under Section 161 Cr.P.C. was recorded and her medical examination was conducted. The statement of the prosecutrix under Section 164 Cr.P.C. was also recorded before the MM wherein prosecutrix had clearly stated that she wanted to live with the petitioner no.1 and she did not want to go to her parent's home.

1.3 On 31.08.2018, a female child was born from the marriage. On 09.09.2018, the petitioner No. 1 was arrested and sent to the judicial custody. On 17.11.2018, the charge-sheet was filed by the police and accused petitioner no.1 was charged under Sections 376/363/366 IPC along with Section 6 of POCSO Act. On 09.04.2019, examination in chief of the prosecutrix was conducted wherein she did not support the case of the prosecution. On 31.07.2019, during cross-examination the prosecutrix, she stated that her age as recorded in the school records was not on the basis of birth certificate but on an affidavit given by her father mentioning the wrong year to secure admission in the school. On 06.08.2019, the petitioner no.1 was released on interim bail by the Sessions Court and thereafter the present petition was filed.

1.4 It has been submitted that petitioner no.1 and prosecutrix/respondent no.2 are living as husband and wife and they want to continue doing so in future. Both of them liked each other and wished to marry each other, however, father of the prosecutrix was against this marriage. Prosecutrix out of her own will, had left with petitioner no.1 without informing her parents.

2. Status report has been filed on behalf of the State reiterating that the



FIR was registered on the complaint of father of prosecutrix/respondent no.2, who had stated that her daughter aged 16 years was missing on 20.06.2018. Later on, complainant brought his daughter to police station where her statement under Section 161 Cr.P.C. was recorded, wherein she stated that she liked the present petitioner no.1 and wanted to marry him but her parents were not willing to get her married to him. So, she eloped with him and got married in Lucknow and thereafter they made physical relations with each other. In her statement under Section 164 Cr.P.C. recorded before the MM, the prosecutrix stated that she had left house of her parents as they were not ready to perform her marriage with the present petitioner no.1. On the basis of date of birth mentioned in the school records, the prosecutrix was a minor at the time of marriage. On 31.08.2018, a female child was born to the prosecutrix. The petitioner was arrested on 09.09.2018. The charge-sheet was filed against petitioner no.1 after completion of investigation. Since there was insufficient evidence against petitioner no.2 and 3 so, they were kept in column No.12 of charge-sheet. The prosecutrix did not support the case of the prosecution in her examination in chief and thereafter her cross-examination was done. The petitioner was granted interim bail.

3. During arguments, learned counsel for the petitioner submits that the coordinate bench of this Court under the similar circumstances, has already quashed the FIR vide order dated 21.02.2022 in CrI.M.C. 27/2022 titled “*Kundan & Anr. Vs. State & Ors.*”. The relevant portion of the said judgment is quoted hereunder:-

“5. 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.

6. 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." (emphasis supplied)

7. Ordinarily the High Courts must show restraint in quashing FIRs for offences under Sections 376 IPC and POCSO Act. In the instant case the FIR was registered under Section 363 IPC and Section 376 IPC and Section 6 of the POCSO Act were added later on. The victim/Petitioner No.2 has stated in her 164



statement that she was in love with the Petitioner No.1 and she eloped with him out of her own volition. It is stated they got married in a temple in Uttar Pradesh on the very next day and the Petitioner No.2/victim has given birth to a baby boy. The families of the Petitioners No.1 & 2 have accepted the marriage.

8. Considering the fact that the whole life of Petitioner No.1 and Petitioner No.2 and their child would be ruined, this Court asked the learned APP as to whether she has any objections if this Court exercises its jurisdiction under Section 482 Cr.P.C and quash the FIR. Learned APP for the State very fairly and taking humanitarian approach stated that she has no objections if the instant FIR is quashed.

9. In view of the peculiar facts and circumstances of this case, this Court is inclined to quash the FIR. Resultantly, FIR No.275/2019 dated 30.10.2019 registered at Police Station Delhi Cantt for offences under Section 363/366/376 IPC and Section 6 of the POCSO Act and the proceedings emanating therefrom are hereby quashed”.

4. The facts of the present case are identical to the case cited above, i.e., *Kundan & Anr. Vs. State & Ors.* (supra). The petitioner no.1 and the prosecutrix are living happily along with their child; they have already got married and in case the present petition is not allowed and the case is allowed to drag on, then no useful purpose will be served as prosecutrix herself is not supporting the case of the prosecution in the version given by the prosecutrix in her statement under Section 161 Cr.P.C., and Section 164 Cr.P.C., in her examination in chief and her cross-examination. However, the only impeding factor is that the prosecutrix was a minor at the time of incident. The stand taken by her is that she herself eloped with the petitioner no.1 with a view to get married and she wanted to live with the petitioner no.1 only and later on they got married in Lucknow, started living as



husband and wife and a child was also born from the wedlock. At this stage, if the present petition is not allowed then it will ruin three lives including the life of the minor child, who is not at fault.

5. Keeping in view the facts and circumstances of the case and in order to do complete justice to the parties, this Court, in exercise of its powers under Section 482 Cr.P.C., is inclined to allow the present petition and it is hereby ordered that FIR No. 457/2017 registered at PS Jaitur under Section 363 IPC, charge-sheet dated 17.11.2018 under Sections 376/363/366 IPC along with Section 6 of POCSO Act and consequent proceedings emanating therefrom are hereby quashed.

6. The petition is accordingly allowed.

TALWANT SINGH, J

MAY 24, 2022/nk

Click here to check corrigendum, if any