

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH**127+205****CRM-M-15387-2021 (O&M)****Date of order: 07.08.2023****Harpreet Singh & Another****.....Petitioner(s)****Vs.****State of Punjab & Another****.....Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA****Present:-** Mr. Arun Takhi, Advocate
for the petitioners.

Mr. Aditya Kapoor, AAG Punjab.

Nidhi Gupta, J.**CRM-17433-2022**

This is an application under Section 482 Cr.P.C. for placing on record Annexure A1 to Annexure A3.

After going through the contents of the application, the same is allowed subject to all just exceptions.

MAIN CASE

Present petition under Section 482 Cr.P.C. is filed seeking quashing of FIR No.174 dated 08.08.2020 (Annexure P4) under Section 363 IPC and G.D. No.45 dated 19.09.2020 (Annexure P7) whereby offence under Section 366-A IPC has been added subsequently in above FIR, registered at Police Station Dasuya, District Hoshiarpur and quashing of all subsequent proceedings arising therefrom.

2. Learned counsel for the petitioners inter alia submits that petitioner No.1 was having a love affair with petitioner No.2. Date of birth of petitioner No.2 is 06.04.2004 and date of birth of petitioner No.1 is 08.11.1991. However, parents of petitioner No.2 were not agreeing to this alliance. As such, on 01.08.2020, petitioner No.2 left her parental home on her own accord and accompanied petitioner No.1 according to her own sweet will. Thereafter, parents of petitioner No.2 started extending threats to the life and liberty of the petitioners and threatened to kill them. With the help of the police, parents of petitioner No.2 were also raiding house of petitioner No.1 and unnecessarily harassing his family. On 18.08.2020, both the petitioners got married and have since been living together happily as husband and wife.

3. Learned counsel further submits that in the face of the threats extended by the parents of petitioner No.2, the petitioners filed protection petition before this Court being CRWP-6587-2020 which was allowed by this Court vide order dated 31.08.2020 (Annexure P3). In the meantime, the petitioners discovered that respondent No.2/complainant had already got present false FIR No.174 dated 08.08.2020 under Section 363 IPC registered at Police Station Dasuya, District Hoshiarpur (Annexure P4) against unknown person. It is submitted that on 18.09.2020, petitioner No.2 appeared before the Illaqa Magistrate and made statement under Section 164 Cr.P.C. wherein she admitted her marriage with petitioner No.1 on her own free will and flatly refused to go with respondent No.2. Thereafter, petitioner No.1 was kept in illegal custody whereas petitioner No.2 was produced before the Chairperson, Child Welfare Committee,

Hoshiarpur, who sent her to Children's Home Gandhi Vaneet Aashram, Jalandhar, District Jalandhar against her wishes. Even though it is well settled that a minor or major girl cannot be sent to Nariniketan/Child Protection Home against her wish. It is submitted that thereafter, even though no offence under Section 366-A IPC was made out yet with sheer abuse of process of law by police in connivance with respondent No.2, offence under Section 366-A IPC was added by way of impugned G.D. No.45 dated 19.09.2020 (Annexure P7). Even in habeas corpus petition filed by sister-in-law of petitioner No.1 bearing CRWP-7785-2020, petitioner No.2 appeared before this Court on 18.01.2021 and categorically stated that she did not want to go with her father and wanted to go with petitioner No.1. It is submitted that accordingly, vide order dated 02.03.2021, aforesaid petition was dismissed (Annexure P9). While dismissing the petition, this Court categorically held that as the petitioner No.2 had specifically refused to go along with her father/complainant/respondent No.2 herein, she cannot be directed to be released from the Nariniketan/Child Protection Home till she attains the age of majority by giving her custody either to her parents or her relatives including petitioner No.1.

4. In support of his contentions, learned counsel relies upon judgment of Delhi High Court in **"Court on its Own Motion (Lajja Devi) Vs. State Law Finder Doc Id # 390065**, wherein it has been held *"...If the girl is more than 16 years, and the girl makes a statement that she went with her consent, the court will be within its power to quash the proceedings under Section 363 or 376 IPC, but no straight formula can be applied..".*

5. He further relies upon judgment of this Court in **“Kamaljeet Kaur & Another Vs. State of Punjab & Another” Law Finder Doc id # 1408637**, wherein it has been held that:

“Criminal Procedure Code, 1973 Section 482 Indian Penal Code, 1860 Section 363 Kidnapping – Quashing of FIR – Allegations of complainant mother that her minor girl has been enticed away and marriage had been solemnized – Held, allegations in FIR are not sustainable since the daughter of the complainant had willingly left in his company and solemnized a marriage and had even approached the Punjab and Haryana High Court at Chandigarh seeking protection at the hands of her parents – Daughter of the complainant took a conscious decision to run away and solemnize a marriage with petitioner No.2 herein – No such petition/application Prohibition of Child Under Marriage Act, 2006 seems to have been filed to have the marriage set aside either by the daughter of the complainant or the complainant herself on the ground that a marriage had been solemnized with a minor – It would be great injustice to them in case the proceedings under the FIR are allowed to continue against the petitioners – Continuation of the criminal proceedings would jeopardize their married life – FIR quashed – Petition allowed.”

6. Learned counsel also relies upon judgment of this Court in **“Madan Lal & Others Vs. State of Punjab & Another” Law Finder Doc ID # 858403**, which is also along the same lines.

7. Per contra, Learned State Counsel submits that charges have been framed in the present matter. However, learned counsel admits that the parties have married and are living together. Learned State Counsel further submits that at the time of marriage, petitioner No.2 was 16 years 3 months 25 days old and therefore, she was minor. It is submitted that marriage of minor cannot be solemnized therefore, FIR has been rightly registered against petitioner No.1.

8. I have heard learned counsel for the parties.
9. Perusal of record of the case reveals that though notice was issued to respondent No.2-complainant, however, there is no representation on behalf of respondent No.2 despite service. Vide order dated 29.04.2021, proceedings in pursuance of the impugned FIR were stayed by this Court.
10. The legal position as noted above, remains uncontroverted. Learned State Counsel is unable to produce any judgment contrary to the judgments cited above on behalf of the petitioners. Accordingly, in view of the admitted factual and legal position, as noticed above, present petition is **allowed**.
11. Pending application(s) if any also stand(s) disposed of.

07.08.2023
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No