

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

CRM-M-42800 of 2022 (O&M)

Date of decision : 11.01.2023

Rohit Kumar and another

... Petitioners

Versus

State of Haryana and another

.. Respondent

CORAM : HON'BLE MRS.JUSTICE AMARJOT BHATTI

Present: Mr. Sanjeev Sharma, Advocate
for the petitioners.

Ms.Ambika Sood, Addl. AG, Haryana.

Amarjot Bhatti, J

1. Rohit Kumar and Meenakshi have filed the present petition under Section 482 Cr.P.C. for quashing of FIR No. 02 dated 02.01.2019 registered under Sections 363, 366-A of IPC and 4/6 of the Protection of Children from Sexual Offences Act 2012 (added subsequently) registered at Police Station Shahabad, District Kurukshetra (Annexure P-1) on the ground that the petitioners have performed the marriage and they are enjoying their peaceful married life and further that petitioner no. 2 is about four months pregnant, therefore, FIR in question be quashed or any appropriate direction to which this Court deem fit and proper, be passed in favour of the petitioners.

2. The facts of the case are that Raj Kumar-complainant, father of the victim, filed application alleging that his daughter i.e. the victim is aged about 16-½ years old, studying in B.Com 1st year in M.N. College, Shahabad. On 02.01.2019 his daughter went to her college as per routine who did not return home. He strongly believed that Rohit s/o Ramesh Kumar enticed the victim by giving her the allurements of marriage. With

these allegations, FIR was registered under Section 363, 366 of IPC. The investigation was conducted and the offence under Section 4 of Protection of Children from Sexual Offences Act 2012 was added. During investigation, the offence under Section 6 of Protection of Children from Sexual Offences Act 2012 was also added. After completion of investigation, the challan was presented in the Court.

3. The learned counsel for the petitioner argued that in fact, the petitioners were in love with each other. They have performed marriage and they are happily married couple. It is further pointed out that at present, petitioner no. 2 is pregnant and her delivery date is due. The compromise cannot be discarded on the ground that petitioner no. 1 is involved under the provisions of Protection of Children from Sexual Offences Act 2012 . The objective of this enactment was to protect the children from sexual offences. In the case in hand, petitioner no. 1 has performed marriage with petitioner no. 2 and they are living happily. To support his argument, learned counsel for the petitioners relied upon the authority cited in 2022 (2) RCR Criminal 987, Supreme Court of India titled as **K. Dhandapani Vs. State by The Inspector of Police**, vide which the accused was acquitted for the offence under Sections 6 and 5 (n) of POCSO Act, 2012 as he had performed marriage with the raped victim and was mother of two children. He has relied upon another judgment of High Court of Meghalaya at Shillong in Criminal Petition No. 22 of 2022 decided on 09.07.2022, titled as **Shri. Olius Mawiong & Anr. Vs. State of Meghalaya & Anr.** where the FIR registered under Section 6 of POCSO Act 2012 was quashed.

It is argued that the trial before the Court is at final stage. In case, the trial is decided against petitioner no. 1, it will disturb their married

life. It is strongly argued that the aforesaid FIR along with consequential proceedings may kindly be quashed.

4. Learned counsel for the petitioner pointed out that earlier CRM-M-42217 of 2021 was filed by Rohit Kumar for quashing of aforesaid FIR on the basis of compromise. In the said case, the statements of the parties were also recorded and the report was also received. However, the said petition was dismissed as withdrawn as per order dated 25.11.2021 which is Annexure P-9.

5. On the other hand, learned counsel representing the State confirmed in the status report that after completion of investigation, challan has been presented before the trial Court on 01.05.2019. The charge-sheet was framed on 09.07.2019 and the case is pending before the trial Court for defence evidence for 20.10.2022. It is further informed that application filed under Section 311 Cr.P.C. was dismissed. As per the directions of this Court, it was reported that the petitioners have performed marriage and the marriage certificate relied upon by the petitioners is genuine. The learned counsel representing the State pointed out that the allegations against petitioner no. 1 are serious in nature. The witnesses had supported the prosecution evidence. Considering the gravity of offence, the petition filed by the petitioners may kindly be dismissed.

6. I have considered the arguments advanced before me. As per the facts narrated in this case, the FIR was registered on the statement of Raj Kumar, father of the victim who informed the police that his minor daughter left the house for going to college on 02.01.2019 and did not return home. The FIR was registered under Sections 363, 366-A IPC and during investigation, the offence under Section 4 of the Protection of Children from

Sexual Offences Act 2012 and under Section 6 of the Protection of Children from Sexual Offences Act 2012 was also added. The victim was traced out on 26.01.2019 and her statement was recorded before the Magistrate under section 164 Cr.P.C. She was medically examined. After completion of entire investigation, challan was presented in the Court on 01.05.2019. The accused was charge-sheeted on 09.07.2019. At present, the prosecution has already concluded the entire evidence and the case is pending for defence evidence. In the status report, it is confirmed that marriage certificate relied upon by the petitioners, Annexure R-1 is genuine.

7. Firstly as referred above, the first petition filed by Rohit Kumar for quashing of this FIR on the basis of compromise was dismissed as withdrawn and this is the second petition for quashing of the same.

I have considered the marriage certificate placed on record by the learned counsel representing the State along with status report. As per this marriage certificate, the date of marriage is mentioned as 30.10.2021 and date of registration is 04.01.2022 much after the framing of charge against petitioner no. 1. The offence was committed when petitioner no. 2 was a minor. The FIR was registered on 02.01.2019. The objective of the provisions of Protection of Children from Sexual Offences Act 2012 is to deal with such like offences strictly and seriously. The compromise or subsequent marriage of the petitioners cannot be looked into at this stage when the trial is at its fag end. The trial court is to consider the evidence on merits and to see whether the charge-sheet framed against petitioner no. 1 is proved on record or not. Moreover, the power of quashing in criminal proceedings can be exercised sparingly in the cases to prevent the abuse of process of law or to secure the end of justice. The gravity of offence cannot

be over looked. Therefore, considering the aforesaid facts and circumstances of the case, I do not find a fit case for quashing of aforesaid FIR and the petition filed by the petitioners is accordingly, declined.

8. My above observations are made only for the disposal of the present petition. The case will be decided on merits after recording of evidence.

11.01.2023
sd

(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No