



\$~

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

%

Reserved on: 24.11.2023
Pronounced on: 01.12.2023

+ **CRL.M.C. 8609/2023**

SMT. RUBINA & ORS. Petitioners

Through: Mr. R.P.S. Bhati, Advocate

versus

THE STATE (GOVT OF NCT
OF DELHI) & ORS.

..... Respondents

Through: Mr. Naresh Kumar Chahar,
APP for the State.
Mr. Ashok Kumar Mahoor,
Advocates for R-2 & 3

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed seeking quashing of FIR No. 652/2017, registered at Police Station Bhalswa Dairy, Delhi, for the offence punishable under Section 363 of the Indian Penal Code, 1860 ('IPC') and the proceedings emanating therefrom.

2. Brief facts of the case are that the complainant Javed Khan had lodged a missing report of his daughter on 13.12.2017, whereby he had informed the police that he had three children i.e. one son and



two daughters, and on 13.12.2017, when he had gone for work at Mukundpur, his wife and children had remained at home. It was stated that their eldest daughter had gone to school, and second daughter 'Y' aged about 5 years and son 'Z' aged about 2 years, had gone to the house of his elder brother Shakeel Khan which was situated behind their house, in Gali No. 6, to play. It has been stated that thereafter, both of them had gone missing while they were coming back home. It was stated in the complaint that some unknown person might have kidnapped his daughter 'Y' and son 'Z'. On this information, the present FIR was registered under Section 363 of IPC.

3. As per chargesheet, the police had tried to find the missing children 'Y' and 'Z' aged about 3^{1/2} and 2 years respectively, however, they could not be found. The police however had again received an information from the complainant that he had found his missing son 'Z' on 17.12.2017. The daughter of the complainant however, could not be traced by the police.

4. Three years thereafter, while carrying out investigation of FIR No. 75/2020 registered under Sections 363/365/368/370/120B/34 of IPC at Police Station Bhalswa Dairy, Delhi, the police had arrested three accused persons in connection with the present case i.e. Rubina (petitioner no. 1), Nisha (petitioner no. 2) and Kapil Kumar (petitioner no. 3) on 12.08.2020, and had also recovered the minor girl 'Y' i.e. daughter of complainant in present FIR from them.

5. Learned counsel for the petitioner, while praying for quashing of FIR in question, argues that the matter has been settled between



the parties i.e. between the petitioners/accused persons and the complainant i.e. parents of the minor girl 'Y', and no purpose will be served by continuing the present criminal proceedings. It is stated that it is for the welfare of the child that the accused persons should not undergo trial as the child now loves the accused persons and that the accused persons have been taking care of the child. It is also stated that the accused Nisha and Kapil were not aware that children had been kidnapped, and since the accused Kapil Kumar and Nisha could not have become biological parents of a child due to some medical problems, a lenient view may be taken and the FIR which has been registered under Section 363 and the chargesheet filed under Sections 363/365/368/120B/34 of IPC be quashed. It is also argued that in such cases, the Courts should take humanitarian approach and quash the criminal proceedings.

6. Opposing the present petition, learned APP for the State argues that the allegations in the present FIR are serious in nature, and the child kidnapped had been recovered after a period of about three years. It is also stated that the accused Nisha and Kapil were aware about kidnapping of the child as they had bought the child for Rs. 20,000/- from the accused Rubina. Therefore, it is prayed that present petition should be dismissed and such settlements must not be allowed in the larger interest of the society.

7. This Court has heard arguments addressed by learned counsel for the petitioners and learned APP for the State, and has perused material on record.

8. This Court is posed with a unique set of facts, where two



minor children 'Y' and 'Z' aged around five years and two years were kidnapped when they were playing near their house on 13.12.2017. Thereafter, the parents of the missing children had got the present FIR registered. The missing child 'Z' was found on 17.12.2017 but minor girl 'Y' was never found. It was only during the investigation of another FIR, that after a period of around three years, minor girl 'Y' was found and accused persons Rubina, Nisha and Kapil Kumar were arrested.

9. The present petition was filed by the accused persons namely Rubina, Nisha and Kapil, on the ground that the accused persons and the complainant have reached a compromise and that the accused Nisha and Kapil have agreed to take custody, as per law, of the minor girl 'Y' since she has been staying with them for last three years and it is better for her future that she should stay with them. Therefore, by way of present petition under Section 482 of Cr.P.C., the accused persons are before this Court seeking quashing of FIR registered under Section 363 of IPC for the offence of kidnapping and the proceedings emanating therefrom i.e. including the chargesheet which stands filed under Sections 363/365/368/120B/34 of IPC.

10. The relevant portion of the compromise deed dated 31.10.2023 entered into between the parties, on the basis of which the petitioners have sought quashing of the FIR, reads as under:

“...WHEREAS the first party got registered a case FIR No.652/2017, under section 363/365/368/120-B/34 IPC with P.S. Bhalswa Dairy, Delhi against the second party.

AND WHEREAS with to the intervention of family members, respectable persons, mutual friends and well



wishers, both the parties have amicably settled/compromised their all disputes related to the abovesaid FIR.

AND WHEREAS, the first party undertakes to cooperate the second party in getting quashed the abovesaid FIR before the Hon'ble High Court of Delhi, New Delhi.

AND WHEREAS the first party agreed that if any criminal complaint/case/proceeding pending against the second party, the same may be treated as null and void.

AND WHEREAS the above compromise between the parties has been made out of their independent free will and without any pressure, force, fraud, coercion or undue influence from either side or by any third person.

AND WHEREAS the First Party and the Second Party have put their respective hands into this deed after having fully understood the contents herein which have fully been read over and explained to them in vernacular in the presence of the family members and witnesses and the same shall be binding upon both the parties.

IN WITNESSES WHEREOF both the parties have put their respective hands hereinafter reading, understanding and admitting to the contents therein to be correct and binding upon them..."

11. The material on record shows that the minor girl child of the complainant was kidnapped by the petitioner no. 1 and sold to petitioner nos. 2 and 3 for Rs.20,000/-. The girl child could not be recovered for three years after lodging the FIR. The statement of minor girl 'Y' was recorded under Section 164 of Cr.P.C. which reveals that she had stated before the learned Magistrate on 09.08.2020 that around three years ago, when she was playing with her brother, her neighbour i.e. accused Rubina had kidnapped her and her younger brother and had taken them forcibly in a rickshaw. It was also stated that accused Rubina had told the minor girl 'Y' to address her as Rubina aunty, and then she had handed over her and her



brother to accused Kapil and Nisha. She had further stated that accused Kapil and Nisha had then taken her and her younger brother to their home, but after some days, they had taken her younger brother somewhere else. It was stated by minor girl 'Y' that she had then continued to stay with the accused Kapil and Nisha.

12. As per chargesheet, it was revealed during the course of investigation that accused Kapil and Nisha had told Rubina that they needed one child and were ready to give Rs. 20,000/- for the same. On their demand, accused Rubina had kidnapped the daughter 'Y' of the complainant, who was three years old, as well as her one and half year old brother 'Z', and had sold both the children for Rs. 20,000/- to accused Nisha and Kapil. However, the minor boy had raised hue and cry and, therefore, they had dropped him back.

13. The contention of the learned counsel for the petitioners that the accused Kapil and Nisha were not aware of the fact that the minor girl 'Y' was kidnapped cannot be accepted by this Court at this stage since it was revealed during the investigation that they had allegedly paid a sum of Rs. 20,000/- to accused Rubina in order to gain the illegal custody of minor girl 'Y'. In the present case, the statement of minor girl 'Y' recorded under Section 164 of Cr.P.C. before the learned Magistrate clearly reflects that she along with her younger brother had been kidnapped when they were playing near their house by accused Rubina, who had subsequently handed them over to the accused Kapil and Nisha in exchange of Rs.20,000/-.

14. **The current development in this case is concerning**, as the parents of the minor girl, who was kidnapped when she was only



three years old, have entered into a settlement with the accused persons. They claim to have no objection if the couple i.e petitioner nos. 2 and 3, who currently have the unlawful custody of the kidnapped child, continued to have her custody and adopt her.

15. Thus, the case at hand presents unique circumstances. On one hand, there is a deeply troubling situation where a three year old minor girl, along with her younger brother, was kidnapped and subsequently sold to a couple by the accused. While the criminal act itself is distressing, a new layer of complexity has emerged as the parents of the kidnapped child have recently entered into a settlement with the accused persons.

16. The learned counsel for petitioner vehemently argued and insisted that the Courts have to take a lenient and humanitarian approach in such cases and should in the larger welfare of the child allow the accused persons who bought the child for Rs.20,000/- and the accused who kidnapped and sold the child for the said amount, quash the FIR. This Court is unable to accept this argument as acceding to this argument is not only against the fundamental principles of criminal jurisprudence but also legitimate expectations of the society to punish those who commit heinous offences.

17. Such circumstances force this Court to reinforce through this judgment that the society, by its very nature, relies on certain fundamental principles to function cohesively. One of these principles is the recognition and protection of the rights of its most vulnerable members i.e. the children. Our legal system, therefore, is also designed not only to punish wrongdoers but also to safeguard the



welfare of individuals, especially those who are vulnerable and unable to protect themselves i.e. the children.

18. At its core, **this case brings to light the critical question of the commodification of children**, a practice that goes against the moral values and ethical standards of the society. **The idea that a girl child can be subjected to a transaction, where her custody is negotiated as if it was a piece of property, challenges the very principles of rule of law.** The Court's role in such a situation is pivotal, as it must grapple with the desire of the parties and the broader societal implications of accepting such settlements.

19. **There are few cases wherein the Courts and the Judges are faced with a dilemma. The present case is one such case.** It is unfortunate that the parents of the child want the child also to remain with the kidnappers since they state that the accused persons will adopt the child as per law. On one hand, it is stated that the child is being looked after by the kidnappers, and the parents themselves do not want the girl child back. On the other hand, there is a situation that the child was kidnapped and was bought by the kidnappers, as one of the accused is unable to give birth to a child, due to some medical infirmity.

20. **The dilemma is between the rigors of law, and the emotional attachment** put forth by the complainant themselves, who presume that as a matter of right, the FIR can be quashed in a criminal case on the basis of their compromise. They presume and take it for granted that the manner in which their complaint was registered and investigated by the police, as it was a matter of their



right, the chargesheet and FIR resulting from the said complaint should be quashed as a matter of their right, as they have settled the case with the accused persons.

21. **The law, however, cannot side with those who are on the opposite side of law.** The Judges though faced with such dilemmas, have to still stand firm on the side of law; and while making every effort to balance the rights of victims, cannot loose sight of the larger implications of such settlements on the society as a whole. Examine from this prospective, the present case is not a case where such dilemma has to lead to exercise of discretion of benevolence by the Court under its writ jurisdiction.

22. The parents of the minor girl child may not want any action against the kidnappers and those who bought their child for a payment of Rs. 20,000/-. The Court, however, has to stand by those, who cannot stand by themselves, as the child in the present case. One has to appreciate and imagine the trauma, stress, the agony of the child, who was only three years of age, that she would have gone through after being kidnapped by the kidnappers from the lawful guardianship of her parents. The statement recorded under Section 164 Cr.P.C. of the victim child narrates that how she was forcefully kidnapped by accused Rubina, the relevant portion of which reads as under:

बयानात की कॉपी हासिल की जो ब्यान इस प्रकार से है 3-2,साल पहले एक दिन में अपने भाई आदिल के साथ गली में खेल रही थी तो पड़ोस में रहने वाली रुबीना Aunti रास्ता पूछने के बहाने मुझे और मेरे भाई को एक Auto में ले गयी हम दोनों उस दिन बहुत रोये थे रुबीना Aunti मुझे और मेरे भाई को दुसरे शहर ले गयी थी वहा पर मुझे व मेरे भाई कपिल व निशा aunti को दे दिया । वो हमे घर ले गए कुछ दिन बाद मेरे भाई को मुझसे अलग कर दिया फिर साल पुलिस अंकल आये और कपिल व निशा 3/2 aunti को पकड़कर हमे दिल्ली ले आये । जो फिर मन ASI ने MM साहब की अदालत में मुलजिमान को



23. Furthermore, the Court must also consider the long-term impact on the girl child, both psychological and in terms of her overall development. Placing a child in a situation where her lawful custody is being determined through a settlement, where the child after being kidnapped had remained out of the lawful custody of her parents for a period of three years, also raises serious concerns about the child's future and well-being.

24. Society relies on a legal system that upholds the principles of law and justice and protects its most vulnerable members. In the face of a crime against a minor girl child, the Court's duty is to ensure that justice is not only served, but the sanctity of child's rights is preserved, reinforcing the unequivocal message that children are not tradable entities, and their safety and well-being is non-negotiable. The argument repeatedly put forth with force that she is attached to the kidnappers/ offenders, and therefore, the FIR be quashed has to be rejected by this Court with the same force since the crime in question cannot be obliterated by the fact that the kidnappers have looked after the child. The fact remains that they had got the child kidnapped, made payment of money to separate the child from the biological parents and her siblings, which is a crime under the law. In case lenient view is taken in such cases and FIRs are quashed on the basis of such agreements, it would amount to defeating the principles of criminal law, and in the process weakening the rule of law.

25. In a case where a **minor girl aged about 3 years was kidnapped**, it is for the State and Courts to ensure that strong deterrence is ensure through judgments and law to act as barriers to



such offences so that a safe environment for children can be developed.

26. This Court is of the opinion that the offence of kidnapping and trafficking of children are serious offences, having an impact on the society at large as well as on the child's well-being and development. This Court though takes note of the parent's decision to reach a settlement, it cannot condone a practice that treats a minor girl as a tradable commodity. Such a notion goes against the principles of justice and the established legal framework designed to protect the rights and interests of children. In other words, such a settlement raises ethical and legal concerns as it involves a practice where a child is effectively being treated as a commodity, jeopardizing the child's well-being and contravening basic principles of law.

27. Moreover, the acceptance of such settlements could contribute to the perpetuation of a culture where the rights and dignity of children are subjugated to negotiation and compromise. This would set a precedent that contradicts the principles of justice and protection inherent in our legal system. Quashing criminal proceedings in such cases would send a message to society that the severity of crimes against children, even those involving kidnapping and trafficking, can be mitigated or overlooked through private agreements, thereby eroding the very foundation of the rule of law.

28. Therefore, in the opinion of this Court, such a practice of compromising cases which involves kidnapping of innocent minor children cannot be allowed and the criminal proceedings cannot be



quashed based on such settlements. It is crucial to set a precedent that unequivocally condemns the act of kidnapping and trafficking of children, ensuring that rule of law prevails in the society.

29. Thus, in view of the reasons recorded in the aforesaid discussion, this Court finds no reasons to quash the present FIR and the proceedings emanating therefrom.

30. Accordingly, the present petition is dismissed.

31. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

DECEMBER 1, 2023/kd