



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-755-2021

Date of decision: 20.08.2024

Gurmail Nain

....Petitioner

V/s

State of Haryana and others

....Respondents

CORAM: HON’BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Lalit Goyal, Advocate for the petitioner.
Ms. Priyanka Sadar, AAG Haryana.
Mr. Lajpat Rai Sharma, Advocate for respondent No.2.
Mr. Rajveer Singh Brar, Advocate for respondent No.3.

SUMEET GOEL, J. (Oral)

1. The present petition has been filed, under Section 482 of the Code of Criminal Procedure Code of 1973 (hereinafter to be referred as “Section 482”), by the petitioner for quashing of FIR No.238 dated 21.08.2020 (impugned FIR) registered under Sections 365 of Indian Penal Code, 1860 (offence under section 365 of IPC deleted and offence under Sections 363, 366-A of IPC added later on) at Police Station Kaithal Sadar, District Kaithal and all consequential proceedings arising therefrom.
2. It would be pertinent to refer herein to the factual matrix of the present *lis*:
- (i) The impugned FIR, as spelt out in the present petition, is as follows;

“12. First information contents. At this time, Jagbir Singh son of Birbal resident of Sirta came to the Police Station and moved an application which is alike this- To the SHO, Sahib, Police Station Sadar Kaithal, Sir, it is requested that I, Jagbir Singh son of Birbal, am resident of Sirta. I have two children, out of which one is son namely Sumir aged 14 years and one is



daughter namely Sheetal whose age is about 17 years 8 months and date of birth is 02.12.2020. My daughter Sheetal, on yesterday dated 20.08.2020 at about 10.00 A.M. from her house at village Sirta had gone to Kaithal for filling form of CA, who did not come back to the home, to whom had been searching till today. I have full suspicion that some unknown person had kidnapped my daughter Sheetal. Description of my daughter is alike, face round, complexion fair, height 5.4 inches and is wearing white suit salwar (trouser), veil (Dupata) of red colour and shoes (Juti) in her feet. My daughter be traced out and legal action be taken against unknown person. Mobile number of my daughter is 74045-30060. SD/- Jagbir Singh son of Birbal resident of Sirta XXXXXXXXXX, Place, Police Station.”

The complainant/informant in the impugned FIR is one Jagbir Singh, who has been impleaded as respondent No.2 herein and the victim is his daughter namely Sheetal, who has been impleaded as respondent No.3 (herein).

(ii) The petitioner has pleaded that after registration of the impugned FIR, the statement of the victim-respondent No.3 (herein) under Section 164 of Cr.P.C., 1973 was recorded before the Magistrate wherein she has not supported the allegations levelled in the FIR registered by her father as also refused to join the company of her parents. It was further stated that respondent No.3 has refused to undergo medical examination as no wrong act had been committed upon her. As prosecutrix refused to join the company of her parents, she was sent to Nari Niketan. Thereafter, concededly, on attaining the age of majority, the prosecutrix was released from Nari Niketan on 16.12.2020 and thereafter she was got married with the petitioner on 17.12.2020 and had been living happily together as husband and wife.

(iii) After solemnization of marriage, petitioner and respondent No.3 filed a petition for protection of their life and liberty before the Sessions



Judge, Sangrur which was disposed of vide order dated 18.12.2020; relevant whereof reads as under:

“Heard. In view of law laid down by the Hon'ble Punjab and Haryana High Court in a case titled as Asha Rani and another Versus State of Haryana and others, Civil Writ Petition No.6717 of 2009. decided on 25.07.2012, respondent no.2 is directed to give police protection to the petitioners and ensure safety of their lives and liberty. The District Magistrate, Sangrur shall allow them to live in the Protection Home, Sangrur, if needed by the petitioners. One copy of this order be provided dasti to the petitioners for putting up before SSP, Sangrur and District Magistrate, Sangrur and second copy be immediately sent to SSP, Sangrur and District Magistrate, Sangrur for compliance in letter and spirit and for report on 08.02.2021. Notice of this petition be also issued to the respondents no.7 and 8 for the date fixed, on filing of process fee, registered covers and copies of petition.”

(iv) It is in this factual backdrop that the quashing of the impugned FIR as also all proceedings arising therefrom has been sought for.

3. Learned counsel for the petitioner has argued that the petitioner and the victim were having an affair whereinafter they got married on 17.12.2020, the victim was major at the time of marriage; the petitioner and the victim have been happily living together and the continuation of the proceedings *qua* the impugned FIR would amount to gross abuse of process of law. Hence, quashing of the impugned FIR as also all proceedings arising therefrom has been sought for.

3.1 The State of Haryana has filed a reply dated 14.06.2023, relevant whereof reads as under:-

“3. That on perusal of the complaint present Fir, under section 365 IPC was registered and investigation was conducted by ASI Satywan. During investigation on verification of DSP AEC Kaithal section 365 IPC was deleted and section 363/366A IPC were added in this case. On 05.09.2020, the victim was recovered and her statement under section 161 Cr.P.C was recorded in which she categorically alleged that the petitioner



seduced her and took her to Gurugram on the false pretext of marriage. The statement of victim under section 161 CR.P.C is already annexed with the petitioner as Annexure-P-5. Due to corona positive she was isolated. On 15.09.2020 victim's counseling was done and statement under section 164 Cr. P.C (Annexure-P-8) was recorded in the Learned Trial Court.

4. *That on 16.09.2020 accused Gurmail s/o Sh. Chander Bhan resident of Banarsi District Sangrur was arrested and during interrogation he made his disclosure statements which is annexed as Annexure R-1 for kind perusal of this Hon'ble Court. In pursuance of this disclosure statement Gurmail Singh/petitioner demarcated the room taken on rent and got recovered motorcycle Bajaj ct 100 HR 08 F-8096 used in the crime. He also identified the place from where he took the victim with him.*

5. *That after completion of investigation the report under section 173 (8) Cr.P.C was prepared against the petitioner under section 363/366A IPC and was submitted in the Court on 12.10.2020.*

6. *That charges against the petitioner has been framed under section 363/366A IPC by the Learned Trial Court vide order dated 05.02.2021. Now the case is fixed for 24.07.2023.*

7. *That are total 15 witnesses in this case and upto now no witness has been examined.*

8. *That the petitioner is not involved in any criminal case as perusal of the available police report."*

Learned State counsel has made submissions in tandem with the aforesaid short reply filed by the State of Punjab.

3.2 Learned counsel appearing for respondent No.2 has submitted that the allegations against the petitioner are serious in nature as he has enticed away his minor daughter.

3.3. Learned counsel appearing for respondent No.3 has made submissions in tandem with the submissions made by learned counsel for the petitioner.

4. I have heard learned counsel for the parties and have perused



5. It would be apposite to refer herein to a judgment of this Court passed in **CRM-M-4660-2020** titled as **Surjit Rai vs. State of Punjab and others**, decided on 05.06.2024; relevant whereof reads as under:-

“8. More often than not, this Court is faced with an incessant stream of petitions wherein the father/guardian has got registered an FIR by stating that his daughter has been enticed away by the accused. As the factual position gradually unfolds; it is found that the accused and the victim were earlier in a relationship and have, in some cases, later on even solemnized marriage but the said relationship/marriage was not to the liking of the guardian/family of the victim. For parents to tether their affinity towards a daughter only through (injured) honour, psychogenic pain of separation or sheer dominance of Will is neither altruistic nor a kindered affinity, both of which are necessary foundation to a family. Parents must take into account that their children may make choices which are individual to them; and just as life does not tarry with yesterday, certain consequential life events cannot be reversed. It must be also considered what William Shakespeare asseverated, in the play “A Midsummer Night’s Dream”:

“Love looks not with the eyes, but with the mind; And therefore is wing’d Cupid painted blind.....”,

If a daughter has followed her mind to enter into a matrimony that a father disapproves of, thinks of it as being an outcome of being blinded by sheer love or even feels wounded by the manner of it; love for the daughter, kinship for progeny and consideration for salubrity of familial relationship, at the very least, far outweigh belligerence and phyrhic victory of having prolonged antagonism and actions arising thereof towards daughter and her matrimony.

8.1 The Hon’ble Supreme Court in case of **Mafat Lal** (supra) has enunciated that, in such like case, the offence of kidnapping is not made out and no useful purpose would be served by sending the accused to trial. Further, the Hon’ble Delhi High Court in the case of **Arif Khan** (supra) has considered the factum of the accused and the victim having been married and happily raising their family to be sufficient cause(s) to quash such like FIR (as also proceedings arising therefrom) in the interest of justice.

8.2 There is yet another aspect of the matter viz. whether the victim had left the lawful guardianship on her own accord. The Hon’ble Supreme Court in the case of **S. Varadarajan** (supra) has enunciated that, if the facts of a case reflect that the victim had left the lawful guardianship on her own accord, then the accused cannot be said to have taken her out of lawful



guardianship and hence the offence of kidnapping, as stipulated in Section 361 of IPC 1860, would not be made out. Such factual aspect can be well gathered from the statement/stand of the victim in question.

8.3 *This Court in the case of **Talima** (supra) has delved into the nature, scope and ambit of powers of the High Court under Section 482 of Cr.P.C. of 1973 to hold that inherent powers of a High Court are powers which are incidental replete powers, which if did not so exist, the High Court would be obliged to sit still and helpless, see process of law and Courts being abused for the purpose of injustice. There is no gainsaying that it is unequivocal that the inherent powers of the High Court; statutorily recognized by way of Section 482 of Cr.P.C., 1973; are unbridled, unfettered and plenary powers to be exercised for the cause of justice. The High Court is also, well within its jurisdiction, to read between the lines of the case set-up by the complainant/prosecution as also look into and consider all relevant attending circumstances.*

8.4 *For a couple, who have been wedded happily for long and have children; it can be embarrassing, unsettling and even disconcerting to find being subjected to unabated withering over their matrimony.*

“A marriage is a matter of more worth, than to be dealt in by attorneyship”, as William Shakespeare entreated in the play titled Henry VI.

For a parental trifling with conjugal relationship; to the extent of bringing forth to face trial, the accused (husband) alongwith purported victim (daughter of complainant) as also their children, over questioning the raison d’etre of the wedlock, is seemingly a leaf out of Commedia Dell’Arte. The sheer distress caused to the young couple and their children on this account is unfathomable. A father’s rancor cannot be permitted to remain extant ad infinitum ad nauseam. To have the accused (now husband to the victim as also now father to the children born from wedlock), the purported victim (daughter to the complainant, now wife to the accused and now mother to the children born from wedlock) as also children; brought forth to Court, repeatedly, to question and scrutinize the wedlock, of which the said children are born of, would be outrightly farcical & patently ludicrous.

8.5 *There is yet another pertinent aspect of the matter.*

A marriage is an admittance into family life which becomes a basic unit of community and society. When children are born to this covenant, the marriage does not remain an entity and ensconced between two people but it pivots into a family wherein children’s presence kindles a collective obligation for the kinsfolk and even the wider Society. Hence, to trifle with a family by way of having the sanctity of matrimony questioned, is egregious. It



would tantamount to injustice, especially to the children, if the accused and his wife (purported victim) are left to such an inveterate belligerence.

8.6 *Ergo, in the cases of nature as the one in hand is; it would not serve the interest of justice nay substantial justice, if the High Court were to decline to exercise its inherent plenary powers under Section 482 of Cr.P.C., 1973 to quash the FIR as also all proceedings emanating therefrom to secure the indefatigable cause of justice. This Court must hasten to add a word of caution herein viz. this course of action ought to be adopted with careful consideration of entirety of facts and circumstances of the particular case in hand for no such principle/course of universal application can possibly be laid down.*

8.7 *As a result of the above rumination, the following postulates emerge:*

(i) *Where the impugned FIR pertains to allegation of offences under Sections 363-A/366 of IPC& it emerges that the accused and the victim have married each other and are living happily, the High Court ought to consider, with a high degree of latitude, such plea for quashing such an FIR (as also proceedings arising therefrom). Such plea would be fortified in case child has been born from the wedlock.*

(ii) *The factum of the victim being minor at the time of the alleged offence shall not ipso facto call for rejection of such a plea on this score itself. Even in such like cases, the High Court is well within its jurisdiction to evaluate the entirety of facts including the factum of the victim having attained the age of majority and still staying in the matrimony, the said couple having been blessed with child etc.*

(iii) *There is no gainsaying that above postulates are not to be universally/sweepingly applied, for every case has its unique facts/circumstances.”*

6. The impugned FIR was got registered by respondent No.2 on 21.08.2020 primarily alleging that his daughter was enticed away by the accused. As per the undeniable factual position; the petitioner-accused got married with the victim on 17.12.2020 whereinafter they were granted protection also by the Sessions Court vide order dated 18.12.2020. The victim had attained the age of majority at the time of marriage & had solemnized marriage on her own volition. The purported victim-respondent



purpose would be served by relegating the matter for trial especially in view of the statement of the victim made under Section 164 of Cr.P.C.,1973 wherein the victim has not supported the allegations levelled in the FIR registered by her father as also refused to join the company of her parents. It is conceded position that victim was major at the time of her marriage with the petitioner-accused and she is living happily with the petitioner-accused & the impugned FIR was got registered by her father as the said relationship/marriage was not to his liking. Therefore, keeping in view the totality of the facts and circumstances of the case in hand, this Court finds it a fit case for exercise of its inherent plenary jurisdiction to quash the impugned FIR as also all proceedings emanating therefrom.

Decision

7. Accordingly, the FIR bearing No.238 dated 21.08.2020 (impugned FIR) registered under Sections 365 of Indian Penal Code, 1860 (offence under section 365 of IPC deleted and offence under Sections 363, 366-A of IPC added later on) at Police Station Kaithal Sadar, District Kaithal and all consequential proceedings emanating therefrom are quashed.
8. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

August 20, 2024
Ajay

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