

Date of decision: 23.04.2024

...PETITIONER

...RESPONDENTS

Mr. Rishabh Singla, AAG, Punjab.

HARPREET SINGH BRAR J. (ORAL)

FACTUAL MATRIX

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3. Learned counsel for the petitioner *inter alia* contends that petitioner and daughter of complainant/respondent No.2 were in a consensual

relationship and ultimately, they performed love marriage and the FIR (supra) was lodged by the complainant as he opposed the relationship of the petitioner and his daughter. It is further contended that the daughter of the complainant was major and she has married with the petitioner with her own sweet will. The petitioner and daughter of the complainant/respondent No.2 performed marriage on 15.06.2017 according to the Hindu rites and ceremonies. Thereafter, the marriage was registered before the Registrar in which, she has reiterated her consent on oath as discernible from Annexure P-3. Since, performing the marriage, the petitioner and daughter of the complainant are cohabiting together as husband and wife and out of the wedlock, a female child was born. Perusal of the Annexures P-2 and P-3 clearly indicates that at the time of the marriage, the petitioner was 25 years of age and daughter of the respondent No.2/complainant was more than 19 years of age. It is further contended that even for the sake of arguments, it was admitted that the daughter of the respondent No.2/complainant was minor at the time of marriage. Learned counsel for the petitioner further submits that since petitioner and daughter of respondent no.2 have solemnized their marriage with free will and are peacefully leading their matrimonial life together, the offences under Sections 363 and 366-A IPC cannot be made out and therefore, continuation of proceedings in FIR (supra) would be an abuse of process of law. Learned counsel places reliance on the following:

Sr. No.	Case Title	Court
1.	K. Dhandapani v. The State 2022(2) R.C.R.(Criminal) 987	Hon’ble Supreme Court
2.	Ananda D.V. V. State and others 2021(OLR) 1074	

3.	Kapil Gupta v. State of NCT of Delhi and others 2022(4) R.C.R.(Criminal) 497	
4.	Jatin Aggarwal v. State of Telangana and others 2022(2)R.C.R(Criminal) 603	
5.	Ranjeet Kumar v. State of H.P. and others MANU/HP/2314/2013	Himachal Pradesh High Court (DB)
6.	Narinder Kaur @ Ninder Kaur and others v. State of Punjab and others CRM-M-41204-2020	Punjab and Haryana High Court
7.	Ashik Ramjan Ansari v. The State of Maharashtra and others 2023 CriLJ 3633	Bombay High Court
8.	Sabari v. Inspector of Police, Belukurichi Police Station and others 2019(3) R.C.R(Criminal) 452	Madras High Court
9.	Jitender Kumar Sharma v. State and others 2010(4) R.C.R.(Criminal) 20	Delhi High Court (DB)
10.	Skhemborlang Suting and others v. State of Meghalaya and others MANU/MG/0054/2022	Meghalaya High Court
11.	Tarun Vaishnav v. State of Rajasthan and others MANU/RH/16181/2022	Rajasthan High Court
12.	Kundan and another v. State and others Cri.M.C. 27/2022	Delhi High Court
13.	Devendranath v. State of U.T. Chandigarh and Others	Punjab and Haryana High Court

	CRM-M-23281-2023	
14.	Madan Lal and others vs. State of Punjab and another <i>2017 (3) R.C.R. (Criminal) 403</i>	Punjab and Haryana High Court

4. There is no representation on his behalf of respondent No.2.
5. Per contra, learned State counsel, affirms the fact that the respondent No.2/complainant has submitted an affidavit before the Investigating Officer with regard to the marriage of his daughter with the petitioner. He has also affirmed that both are cohabiting together as husband and wife. Learned State counsel further submits that the investigating agency has concluded the investigation and filed the cancellation report before the concerned jurisdictional Magistrate, however, the same was not accepted by the concerned Court.

ANALYSIS & OBSERVATION

6. Having heard the learned counsel for the petitioner and after perusing the record with his able assistance, it transpires that daughter of respondent No.2 solemnised marriage with petitioner on 15.06.2017. The marriage between two persons who do not satisfy the age criterion, as laid down by Section 5 of the Hindu Marriage Act, 1955, does not become void *ab inito*. Such a marriage would be voidable at the instance of the minor party. Therefore, in absence of such declaration in view of the Prohibition of Child Marriage Act, 2006, the marriage subsists and the husband can be the legal guardian of his minor wife, as reaffirmed by a Division Bench of this Court in ***Mamta v. Rohan Verma 2022(2) R.C.R.(Civil) 349***. A Full Bench of Delhi High Court in ***Court on its Own Motion(Lajja Devi) versus State 2012(4) CCR 72*** has held that if the girl is more than 16 years of age and makes a

statement to the effect that she left of her own volition and records a statement indicating that the consent was without any force, coercion or undue influence, the Court will be within its power to accept the statement and quash proceedings under Sections 363 or 376 of the IPC. It has been further held that the FIR can be quashed if after attaining the age of majority, she affirms and reiterates her consent.

7. Daughter of respondent no.2 has now attained the age of majority and wants to continue with her matrimonial life and has tendered an affidavit dated 21.12.2017 (Annexure P-3) wherein she has asserted that she left with the petitioner with her own consent and is happily married to him. If the criminal proceedings against the petitioner allowed to continue, not only will it lead to unnecessary incarceration of the petitioner but also leave daughter of respondent no.2 bereft of financial and emotional support. Thus, no useful purpose would be served by continuing the proceedings as the chances of conviction are abysmal. The continuance of the present proceedings in the present case would be nothing but wastage of valuable judicial time, especially, when the Courts are already over-burdened.

CONCLUSION

8. In view of above facts and circumstances, the present petition is allowed.

9. Accordingly, the FIR No.39 dated 03.04.2017 (Annexure P-1) registered under Sections 363 and 366-A of IPC, 1860 at Police Station Punjab Agriculture University (PAU), Police Commissionerate, Ludhiana and all other consequential proceedings arising therefrom, are quashed qua the petitioner.

April 23, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE