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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of decision: 17.09.2024

Kapil and another

...Petitioners

V/s

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Gaurav Grover, Advocate with
Ms. Charu Sharma, Advocate with
Mr. Himanshu Arora, Advocate for the petitioners.
Ms. Priyanka Sadar, AAG Haryana.
None for respondent No.2.

SUMEET GOEL, J. (Oral)

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure 1973 (hereinafter to be referred as "Section 482"), by the petitioners for quashing of FIR No.0142 dated 23.09.2017 (impugned FIR) registered under Sections 363, 366, 366-A, 376 and 120-B of Indian Penal Code, 1860 and Sections 4 and 6 of POCSO Act at Police Station Saha, District Ambala and all consequential proceedings arising therefrom *qua* petitioner No.1, who is husband of petitioner No.2.

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:

"To the SHO Sir, Police station Saha District Ambala, It is submitted that I, Sandeep Kumar son of Surinder Singh is resident of Behta. My uncle Raj kumar died one month ago. My uncle has four daughters, two of them are married and two daughters are young. From these two, one Shilpa is 21 years



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old and youngest one Gunjan is 16 years old. On dated. 19.09.2017, I alongwith the mother of these girls who is my aunt Shushma devi had gone to Haridwar. Smt. Pushpa Devi who is our aunt (Father's sister) was staying at home with these girls. On that night both the girls were sleeping in the house. But on dated 20.09.2017 both these girls were not present at home. I came to know about this after I returned back from Haridwar. So, I and my family searched a lot for these girls. Then we came to know that on dated 20.09.2017 someone has came on motorcycle in the street of my uncle at around 4/5 A.M in the morning. Since that time my cousin sisters are missing from home. From that time, two boys of our village named Abhishek son of Jai Kumar and Kapil son of Yash pal are also missing from home. I and my family is totally assured that these two boys have taken away our both the girls by misguiding them. Till today we have searched a lot for my sisters Shilpa and Gunjan but could not find them. It is requested that my sister may kindly be searched and legal proceeding be initiated against these boys. Sd/- Sandeep kumar.”

The complainant/informant in the impugned FIR is Sandeep Kumar, who has been impleaded as respondent No.2 herein and the victim is his cousin Gunjan who has been impleaded as petitioner No.2 (herein).

(ii) The petitioner No.1 has pleaded that he got married with the victim-petitioner No.2 namely Gunjan on 14.10.2018. It has been further pleaded that after registration of the impugned FIR, the statement of the victim-petitioner No.2 was recorded before the trial Court on 11.12.2018 wherein she stated that she had gone with petitioner No.1 on her own accord and performed the marriage without any pressure and coercion. It has been further pleaded that out of this wedlock, one child has been born.

(iii) It has been further pleaded that after registration of the impugned FIR, the statement of the victim-petitioner No.2 (herein) under Section 164 of Cr.P.C., 1973 was recorded before the Magistrate wherein she stated that she had voluntarily gone with the petitioner No.1 on her own

accord and wanted to live with petitioner No.1-(husband).



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Indisputably, the victim-cousin of the complainant namely Gunjan (petitioner No.1 herein) had married with the petitioner No.1. It has been further pleaded that out of this wedlock, one child has been born.

(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 petitioners has argued that the petitioner No.1 and the victim-petitioner No.2 were having an affair whereinafter they got married on 14.10.2018 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 *qua* petitioner No.1 has been sought for.

3.1 Learned State counsel has submitted that the allegations against the petitioner No.1 are serious in nature as he has enticed away the cousin of respondent No.2. She, however, does not dispute the factum of petitioner No.1 and petitioner No.2 having married each other.

3.2 Service of the instant petition was effected upon respondent No.2-cousin of the victim. However, none has caused appearance on behalf of the said respondent.

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

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 phyrrie 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*



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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 23.09.2017 primarily alleging that his cousin was enticed away by the accused-petitioner No.1. As per the undeniable factual position; the petitioner No.1-accused got married with the victim on 14.10.2018. The victim had solemnized the marriage on her own volition. The purported victim namely Gunjan has wholeheartedly supported the case of the petitioner No.1-accused. No fruitful 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 on 01.10.2017 wherein the victim has categorically stated that she has joined the company of the petitioner No.1 on her own volition and has solemnized the marriage with the petitioner



No.1 voluntarily as also had left her house on her own accord. It is conceded position that the impugned FIR was got registered by her cousin 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.0142 dated 23.09.2017 (impugned FIR) registered under Sections 363, 366, 366-A, 376 and 120-B of Indian Penal Code, 1860 and Sections 4 and 6 of POCSO Act at Police Station Saha, District Ambala and all consequential proceedings arising therefrom *qua* petitioner No.1, are quashed.

8. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

September 17, 2024
Ajay

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