



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

115 CRM-M-12124-2024 (O&M)
Date of decision: 06.09.2024
Rajan ...Petitioner
V/s
State of Punjab and others ...Respondents

CORAM: HON’BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Vishal Sharma, Advocate for the petitioner.
Mr. Adhiraj Singh Thind, AAG Punjab.
Mr. J.S. Grewal, Advocate for
Mr. M.S. Saini, Advocate for respondent No.2.
Mr. Subhash Kumar, 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 1973 (hereinafter to be referred as “Section 482”), by the petitioner for quashing of FIR No.219 dated 18.12.2022 (impugned FIR) registered under Sections 363 and 366 of Indian Penal Code, 1860 at Police Station Division No.2, District Pathankot, Punjab 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;

“Statement of Meenu Bala wife of Sh. Rajinder Kumar resident of Dhira Jattan, Police Station Division No.2, District Pathankot aged about 35 years P.No.6284151088. Stated that I am resident of above mentioned address and is a housewife. I have three children out of them two are boys and one is girl. Among all, elder son is Prince whose age is 19 years and younger to him is daughter Priyanka whose age is 16 years 7 months who is studying in +2 standard in Shaheed Makhan Singh School Pathankot and Aadi younger son



among all whose age is about 13 years. That yesterday on 17/12/2022 at about 5 PM by leaving my daughter Priyanka at home I went to the market alongwith my elder son Prince to buy some household items. When at about 5:30 PM I returned back home then I saw that my daughter Priyanka was not at home to whom I searched thoroughly but no clue has been found. That I am sure that Rajan son of Ashwani Kumar resident of Kothi Pandita, Pathankot has enticed my daughter and take away with him. Because my daughter Priyanka had told me earlier that Rajan was harassing her to be his friend. I along with my brother Bal Kishan son of Hira Lal resident of Abrol Nagar Pathankot was coming to inform you. You have met. Is the Claimant. Legal action should be taken. Meenu Bala above signature in Hindi Sd/- Bal Kishan S/o Hira Lal above signature in English, Attested Dilbagh Singh ASI P.S. Div. No.2 Pathankot Dt.18/12/2022.”

The complainant/informant in the impugned FIR is Meenu Bala, who has been impleaded as respondent No.3 herein and the victim is her daughter Priyanka Devi who has been impleaded as respondent No.2 (herein).

(ii) The petitioner has pleaded that he got married with the victim namely Priyanka Devi on 20.12.2022 whereinafter they had been living as husband and wife. It has been further pleaded that after solemnization of marriage, the petitioner and the victim namely Priyanka Devi filed a petition seeking protection of their life and liberty before this Court vide CRWP-12128-2022 which was disposed of vide order dated 23.10.2022; relevant whereof reads as under:

“5. In view of the above, the present petition is disposed of with a direction to respondent No.2-Senior Superintendent of Police, Pathankot, to look into the representation dt. 20.12.2022 (Annexure P-5), qua threat perception, and if there is any substance in it, take necessary steps, in accordance with law, to ensure that the lives and liberty of the petitioners are not jeopardized at the hands of the private respondents.”

It has been further pleaded that after the lodging of the instant



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him whereupon the petitioner filed a petition seeking anticipatory bail before this Court vide CRM-M-26059-2023 which was allowed vide order dated 22.05.2023; relevant whereof reads as under:

*“Having considered contents of the FIR, role attributed to the petitioner, gravity of offence, sentence prescribed for commission of alleged offence, arguments put forth by the petitioner and law enunciated by Hon'ble Supreme Court in **Thana Singh v. Central Bureau of Narcotics, (2013) 2 SCC 590, Arnab Manoranjan Goswami V. State of Maharashtra, (2021) 2 SCC 427, Satender Kumar Antil V. CBI (2022)10 SCC 51, Siddharam Satlingappa Mhetre V. State of Maharashtra & Ors., 2010 SCC OnLine SC 1375, Shri Gurbaksh Singh Sibbia V. State of Punjab (1980) 2 Supreme Court Cases 565**, this Court is of the prima facie opinion that petitioner deserves protection from arrest. Accordingly, at the first instance, the petitioner is directed to appear before investigating officer on 30.05.2023 and thereafter as directed by IO. In the event of arrest, the petitioner shall be admitted to interim bail on furnishing of bail/surety bonds to the satisfaction of investigating/arresting officer. The petitioner shall co-operate the investigating officer.*

If the arresting officer does not permit the petitioner to join the investigation, the petitioner would appear before the learned Illaqa Magistrate who would then summon the arresting officer and direct him to join the petitioner in investigation, in terms of the order of this Court.”

It has been further pleaded that after registration of the impugned FIR, the statement of the victim-respondent 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 on her own will and she is living happily with the petitioner (husband). It was further stated that respondent No.3 has refused to undergo medical examination as no wrong act had been committed upon her.

(iii) It is worthwhile to note that, victim - respondent No.2 (herein) has entered appearance before this Court on 11.03.2024 and has filed her

reply, relevant whereof reads as under:



“3. That in reply to para 3 of the petition it is submitted that though the facts of FIR have been reproduced in the para but those are incorrect replying respondent has not been allured by the petitioner and went herself from the house on 17.12.2022. it is incorrect that replying respondent has ever told the complainant-respondent no.3 that the petitioner was harassing her earlier at any point of time.

4. That in reply to para 4 of the petition, it is correct that the replying respondent was major at the time of incident as well as at the time of registration of the FIR and it is also correct that replying respondent with her own free will and consent on 20.12.2022. it is also factually correct that after the marriage replying respondent and the petitioner having being apprehension from the family members approached this Hon'ble High Court seeking protection of their life and liberty by preferring a criminal writ petition vide no. CRWP No. 12128 of 2022 titled as "Priyanka Devi and another vs State of Punjab and others", and this Hon'ble Court pleased to dispose of the petition by issuing directions to the Senior Superintendent of the Police to look into the representation of the petitioner.”

Indisputably, the victim-daughter of the complainant namely Priyanka Devi is living happily with the petitioner since the day of marriage.

It has been further pleaded that out of this wedlock, no 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 petitioner has argued that the petitioner and the victim were having an affair whereinafter they got married on 20.12.2022; 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 Learned State counsel has submitted that the allegations against the petitioner are serious in nature as he has enticed away the minor daughter



of respondent No.3. He, however, does not dispute the factum of petitioner and respondent No.2 having married each other. Referring to para 11 of the reply dated 04.09.2024 filed by way of affidavit of Rajinder Singh, Deputy Superintendent of Police, Sub Division City, District Pathankot, learned State counsel has submitted that during investigation, statement of respondent No.2-victim under Section 164 of Cr.P.C., 1973 was recorded before the Magistrate; the same reads as under:

“11. That during the further investigation Respondent No. 2 was taken along with her mother-in-law namely Pooja Rani and her statement under Section 164 Cr.P.C was recorded before the Ld. Court, whereby she stated that she was in a relationship with Rajan and wanted to marry him. That on 17.12.2022 she left her house and on 20.12.2022 she married Rajan (present petitioner). That Rajan did not take her from her house by alluring her and she went with him as per her wish and she is now living with Rajan (present petitioner) happily.

That thereafter, the Respondent No. 2 i.e. victim was taken to the Civil Hospital Pathankot for getting her medical examination conducted, it is pertinent to mention here that the victim refused to get her medical conducted. That further to ascertain the age of the Respondent No. 2, a written request was given by the Investigating Officer to the medical officer for getting the Osification Test conducted, to which medical officer stated that the test will be conducted at Guru Nank Hospital, Amritsar”

3.2. Learned counsel appearing for respondent No.2 has made submissions in tandem with the submissions made by learned counsel for the petitioner.

3.3 Service of the instant petition was effected upon respondent No.3-mother of the victim whereinafter she has entered appearance, through counsel, on 14.08.2024. Learned counsel appearing for respondent No.3 has submitted that the petitioner has allured and abducted the minor daughter of respondent No.3, as her date of birth is 01.05.2006. According to him, the



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without her consent. Thus, it has been prayed that respondent No.2 be immediately released from the illegal custody of the petitioner and dismissal of the instant petition is prayed for.

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 pyrrhic 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.3 on 18.12.2022 primarily alleging that her daughter was enticed away by the



accused got married with the victim on 20.12.2022 whereinafter they are living happily. The victim had solemnized marriage on her own volition. The purported victim namely Priyanka Devi has wholeheartedly supported the case of the petitioner-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 wherein the victim has categorically stated that she wanted to live with the petitioner and had left the house of her mother on her own accord. It is conceded position that the victim is living happily with the petitioner-accused & the impugned FIR was got registered by her mother as the said relationship/marriage was not to her 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. 219 dated 18.12.2022 (impugned FIR) registered under Sections 363 and 366 of Indian Penal Code, 1860 at Police Station Division No.2, District Pathankot, Punjab and all consequential proceedings arising therefrom are quashed.
8. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

September 06, 2024
Ajay