

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

223

Date of order: 29.04.2024

CRM-M-22494-2021(O&M)

Karandeep Singh

.....Petitioner(s)

Vs.

State of Punjab & Others

.....Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Vikrant Vij, Advocate for
Mr. G.S. Bawa, Advocate
for the petitioner.

Mr. Sukhsandesh Singh Chahal, AAG Punjab.

Nidhi Gupta, J.

Prayer in the present petition filed under Section 482 Cr.P.C. is for quashing **on merits** of FIR No.72 dated 10.03.2020 registered under Sections 363 and 366-A IPC at Police Station City Tarn Taran, District Tarn Taran (Annexure P1); and all subsequent proceedings arising therefrom.

2. Learned counsel for the petitioner inter alia submits that the petitioner and the victim/respondent No.3 were in a consensual relationship. Present FIR was registered on the basis of statement of respondent No.2, who is the father of the victim. It has been alleged in the FIR that on the intervening night of 9/10 March, 2020, the petitioner had lured the victim/respondent No.3 for marriage and had therefore, committed an offence under Sections 363 and 366-A IPC. As the petitioner

and the victim were in a consensual relationship, they have solemnized marriage on 29.04.2020 in Gurudwara Damdama Sahib, Tarn Taran as is evident from marriage certificate (Annexure P2).

3. Learned counsel further submits that out of the said wedlock of the petitioner and respondent No.3, one son has been born to them on 17.12.2020 as is evident from the birth certificate (Annexure P4). Furthermore, the complainant is not appearing either before the learned trial Court or before this Court.

4. Learned State Counsel opposes the prayer made on behalf of the petitioner and submits that at the time of the incident, the victim was 16 years of age.

5. Learned State Counsel further refers to the short reply dated 24.01.2024 filed by way of affidavit of Tarsem Masih, PPS, Deputy Superintendent of Police, Sub Division, Tarn Taran, District Tarn Taran, in particular averments made in Para 5 thereof, to however, fairly admit that the victim in her statement recorded under Section 164 Cr.P.C. before the Illaqa Magistrate, Tarn Taran had stated that *"she was in relationship with the accused Karandeep Singh and my parents came to know about the same and her maternal aunt was talking with her father that kill her by way of giving electricity current and she while listening their talk fled away from the house. She took Karandeep Singh with her and firstly stayed at brick kiln. On 24.09.2022, she performed her marriage with Karandeep Singh at Gurudwara Daleke and thereafter, they went to Khadoor Sahib where she gave birth to one boy. Her maternal uncle Kuldeep Singh said that whenever*

they both will meet him then, they both will be burnt while putting oil on them. She wanted to live with her husband Karandeep Singh”.

6. Learned State Counsel further informs that after completion of investigation, the final report under section 173 (2) of Cr.P.C. has already been presented before the learned Court of Illaqa Magistrate, Tarn Taran on 06.02.2023 and the case has been committed to the Court of Sessions Judge, Tarn Taran on the same day, i.e., 06.02.2023 and charge in the present case has been framed on 20.03.2023 and the case is fixed for prosecution evidence and total 13 prosecution witnesses have been cited in the list of witnesses and the same are yet to be examined and now, the next date of hearing before the learned Trial Court is 01.03.2024.

7. No other argument is made on behalf of the parties.

8. I have heard learned counsel for the parties and perused the case file in great detail.

9. At the very outset, it may be mentioned that notice of motion was issued in this case vide order dated 06.07.2021; office report dated 04.10.2021 shows that respondent No.2/complainant stands duly served. However, none has put in appearance on behalf of respondent No.2 till date. The factual matrix of the present case has not been denied by counsel for the State. It is admitted that the petitioner and the victim/respondent No.3 were in a consensual relationship; thereafter they have solemnised marriage on 29.4.2020; and even one child has been born out of their wedlock on 17.12.2020.

10. It may also be pointed out that the petitioner and the victim had also sought protection from this Court vide CRWP-6525-2020 titled as 'Komalpreet Kaur & Another Vs. State of Punjab & Others' in which, vide order dated 28.08.2020, the Senior Superintendent of Police, Tarn Taran had been directed to take action and extend adequate protection to their life and liberty, if necessary. However, in the meantime, as the petitioner and the victim had already performed marriage on 29.04.2020, the said petition was dismissed as withdrawn vide order dated 15.12.2020 (Annexure P3).

11. This Court is of the clear view that the provisions of law have been promulgated with the intent to prevent and punish sexual assault of any kind and in any manner, and not to criminalize consensual relationships amongst young adults and/or adolescents. Offence(s) under Sections 363 and 366-A IPC are attracted when any woman is kidnapped/abducted with an intent to have forced/seduced/illicit intercourse. A bare reading of the statement of the victim under section 164 Cr.P.C. would prima facie indicate that the girl left her family home on her own, on overhearing her family's talks that she will be killed by giving electric current. The subsequent developments clearly show that this is the case where the petitioner and the victim were in love, however, the victim girl was 16-year-old minor at the time of incident i.e. 09.10.2020; and her date of birth is 10.06.2004 It has been observed time and again that adolescent love cannot be controlled by the Courts and the Judges have to be careful in such matters as, *'In the case of lack of inducement or threat,*

the Court must be conscious of the fact that they are not dealing with criminals.'

12. Reliance may be placed upon judgment of Karnataka High Court in **"G. Raghu Varma Vs. State of Karnataka & Others"** Criminal Petition No.13469 of 2023 (482) decided on 19.02.2024, Law Finder Doc ID # 2506169; and of Andhra Pradesh High Court in **"Moka Pradeep Vs. The State of Andhra Pradesh"** Criminal Petition No.1043 of 2024 decided on 05.03.2024: Law Finder Doc Id # 2526478, where it has been held that consensual adolescent relationships cannot be criminalized.

13. Reference may also be made to the judgment of Kerala High Court in **"Anoop vs. State of Kerala and others"** 2022 SCC Online Ker2982 and of Madras High Court in **"Sabari @ Sabarinathan @ Sabarivasan Vs. Inspector of Police & Others"** Law Finder doc Id # 1443121, wherein in para 28 it has been held as follows :-

"28. Therefore, on a profound consideration of the ground realities, the definition of 'Child' under Section 2(d) of the POCSO Act can be redefined as 16 instead of 18. Any consensual sex after the age of 16 or bodily contact or allied acts can be excluded from the rigorous provisions of the POCSO Act and such sexual assault, if it is so defined can be tried under more liberal provision, which can be introduced in the Act itself and in order to distinguish the cases of teen age relationship after 16 years, from the cases of sexual assault on children below 16 years. The Act can be amended to the effect that the age of the offender ought not to be more than five years or so than the consensual victim girl of 16 years or more. So that the impressionable age of the victim girl cannot be taken

advantage of by a person who is much older and crossed the age of presumable infatuation or innocence.”

14. In view of the undisputed facts as also the legal position noticed here in above, present petition is **allowed**; and FIR No.72 dated 10.03.2020 registered under Sections 363 and 366-A IPC at Police Station City Tarn Taran, District Tarn Taran (Annexure P1); and all subsequent proceedings arising therefrom, are quashed qua the petitioner.

15. Pending application(s) if any also stand(s) disposed of.

29.04.2024

Sunena

(Nidhi Gupta)

Judge

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