



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

129

CRM-M-23863-2023

Date of decision: 20.08.2024

Tejpal @ Kallu

....Petitioner

V/s

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Apanjyot Singh Virk, Advocate for the petitioner.
Ms. Mahima Yashpal, DAG Haryana.
None for respondent No.2.
Mr. Kulbir Singh Saini, 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.204 dated 23.06.2021 (impugned FIR) registered under Sections 363, 366-A of Indian Penal Code, 1860 (Section 376(2)(n) of Indian Penal Code, 1860 and Section 6 of POCSO Act, 2012 added later on) at Police Station Bawani Khera, District Bhiwani 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;

“To, the SHO, PS Bawani Khera (Bhiwani), Subject: For search of missing person. Sir, it is requested that I Raj Kumar s/o Sh. Pyare Lal, Caste Dhanak, r/o Ratera, Tehsil Bawani Khera, District Bhiwani. It is humbly requested that yesterday on 22.06.2021 at about 12:00, my daughter Priyanka has enticed away by Kallu s/o Sh. Kiran Pal, Caste Jheor, r/o Banhera, Tehsil



and District Shaymali (UP), now r/o Mehar Brick kiln Ratera. When my daughter did not come back then we tried to search for Kallu and the owner of the Brick kiln informed us that Kallu has left the job today and gone. Thereafter, the owner of the Brick kiln called Kallu and he told that Priyanka is with him. Thereafter, I along with some respectable persons, went to the village of Kallu for taking back my daughter but Kallu did not reached there. I waited there till 11 pm and came back. The mobile number of the Kallu is 9870725697. That my daughter is 16 years old, having height 5 feet, colour normal. Hence, it is requested that my daughter Priyanka may kindly be traced. Thanking you. Dated 23.06.2021, Sd/ applicant Raj Kumar s/o Sh. Pyare Lal r/o Ratera (Bhiwani).”

The complainant/informant in the impugned FIR is Raj Kumar, who has been impleaded as respondent No.2 herein and the victim is his daughter Priyanka who has been impleaded as respondent No.3 (herein).

(ii) The petitioner has pleaded that he got married with the victim namely Priyanka on 04.07.2021 whereinafter they had been living as husband and wife. It has been further 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 stated that she had voluntarily gone with petitioner on her own will and she is living happily with the petitioner (husband).

(iii) It is worthwhile to note that, victim - respondent No.3 (herein) has entered appearance before this Court on 11.05.2023 and filed short reply by way of affidavit of Priyanka (victim-respondent No.3), relevant whereof reads as under:

“4. That the deponent got solemnized the marriage with the petitioner with her own sweet will and it is in the knowledge of respondent no.2 at the time when the deponent had gone with the petitioner and got solemnized the marriage with her own sweet will. The respondent no.2 has falsely implicated the petitioner by making a concocted story. The deponent from very first day categorically stated that she had gone with her own sweet



will with the petitioner and the petitioner had not done any wrongful act with the deponent.

5. That the deponent wants to live happily with the husband/present petitioner and in view of the same the present petition may kindly be allowed”

Indisputably, the victim-daughter of the complainant namely Priyanka is living happily with the petitioner since the day of marriage. It has been further pleaded that out of this wedlock, one male 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 04.07.2021; 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 Service of the instant petition was effected upon respondent No.2-father of the victim. However, none has put in appearance on behalf of the said respondent.

3.2 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.2. She, however, does not dispute the factum of petitioner and respondent No.3 having married each other.

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 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 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 23.06.2021 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 04.07.2021 whereinafter they are living happily.

The victim had solemnized marriage on her own volition. The purported victim namely Priyanka 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 on 16.07.2022 wherein the victim has categorically stated that she wanted to live with the petitioner and had left the house of her father on her own accord. It is conceded position that the 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.204 dated 23.06.2021 (impugned FIR) registered under Sections 363, 366-A of Indian Penal Code, 1860 (Section 376(2)(n) of Indian Penal Code, 1860 and Section 6 of POCSO Act, 2012 added later on) at Police Station Bawani Khera, District Bhiwani and all consequential proceedings arising 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