



CRM-M-32691-2019

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

114-1

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Date of decision: 26.11.2024

Yogesh

...Petitioner

V/s

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Sarvesh Kumar Gupta, Advocate for the petitioner.
Mr. Yuvraj Singh, AAG Punjab.
Mr. Hardeep Singh, Advocate for the 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 "Cr.P.C."), by the petitioner for quashing of FIR No.64 dated 30.05.2018 (impugned FIR) registered under Sections 363, 366 of Indian Penal Code, 1860 at Police Station Bullowal, District Hoshiarpur 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 Shri Kullu S/o Munshi, Caste Yadav, R/o Sehbajpur, P.S. Koor Fatehgarh Distt. Muradabad (U.P.) at present resident of C/o Bakhtawar Singh R/o Chak Raju Singh, P.S. Bullowal, Distt. Hoshiarpur aged about 40 years, Mobile No. 82641-27241, Stated that I am resident of above mentioned address and I am doing labour work. I have been living alongwith my family with Bakhtawar Singh R/o Chak Raju Singh. In my family, I have my wife Amlesh and four children out of which two sons and two daughters. My eldest



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girl Archna whose date of birth is 07.05.2003, has been eloped by Yoges son of Darupal caste Yadav resident of Sehbajpur P.S. Koorh Fatehgarh, Distt. Muradabad (Sambal) U.P. who has taken my daughter on 02.05.2018 at about 11.30 PM alluring her with the intention of marrying her, for whom I have been searching since then. That my daughter has not yet been searched. I was looking for you to inform about this, now you have met. Legal action may be taken against above said Yogesh My daughter's age is about 15 years who is minor. Statement has been recorded and read over and is correct. Sd/'

The complainant/informant in the impugned FIR is Kallu, who has been impleaded as respondent No.2 herein and the victim is his daughter namely Rachna @ Archana.

(ii) The petitioner has pleaded that he got married with the victim namely Rachna @ Archana on 08.05.2018 whereinafter they had been living as husband and wife. It has been further pleaded that out of this wedlock, a male child has been born on 20.06.2020. It has been further pleaded that after solemnization of marriage, the petitioner and the victim namely Rachna @ Archana filed a joint petition (Annexure P-2) for protection of their life and liberty before the Allahabad High Court which was disposed of vide order dated 14.05.2018; relevant whereof reads as under:

“The petitioners are willing to get their marriage registered before the Marriage Registration officer, Sambhal and undertake to get it registered within a period of one month.

*In case, the respondent No.4 or his adherents are threatening the petitioners or preventing them from getting their marriage registered, it is open to the petitioners to make an application to the Senior Superintendent of Police, District Sambhal. The Senior Superintendent of Police, Sambhal is directed to consider the same expeditiously and also take action in terms of the judgment of this Court rendered in the case of **Smt. Raj Kumar (supra)**.*

With the aforesaid observations/directions, the writ petition is finally disposed of.”



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(iii) Indisputably, the victim-daughter of the complainant namely Rachna @ Archana is living happily with the petitioner since the day of marriage. It is worthwhile to note that during the course of proceedings in the present petition, short reply by way of affidavit of Rachna @ Archana (victim-respondent No.3) has been filed, relevant whereof reads as under:

“4. That the father of deponent registered a false FIR in question against the petitioner after delay of 28 days in registration of FIR. The false FIR registered against my husband i.e. petitioner in which my wrong date of birth was mentioned as 07.05.2003, where as my correct date of birth is 10.08 1098.

5. That the deponent has no objection in case this Hon'ble High Court allow the instant quashing petition and quash the FIR and all consequential proceedings against the Petitioner.

6. That the answering responding no 3 is submitting that she is happily residing with her husband and in laws and in case the instant FIR is quashed against her husband she has no objection to the same

7. That in the instant matter, since from the very beginning the deponent is residing with her husband happily therefore her statement under section 164 CrPC was never recorded before any Judicial Magistrate.

8. That it is not out to place to mention here that after the marriage even the answering respondent has conceived and she is having a boy namely Sushant Yadav so which was born on 20.06.2020 and at this stage in case the FIR is not quashed being a misuse of the process of law she has no objection. In this regarding copy of date of birth certificate of the male child is annexed with instant reply as Annexure R3/1.

9. That the answering respondent and her husband petitioner was having serious threat precepts from the parents of the answering respondent therefore they are hiding themselves from here and there since the day of their marriage and taking the advantage of the situation the police has declared the husband of the answering respondent i.e. petitioner as a proclaimed offender which is against the settled principle of law as the husband of the respondent is continuously residing with her at a far away station and never received any process or summons from any of the court or police authority.



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10. That deponent is filing short reply/affidavit on her own sweet will and without any pressure.

11. That the answering respondent No.3 is submitting that she is happily residing with her husband and with her laws and in case the instant FIR is quashed against her husband she has no objection to the same.”

(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 08.05.2018; 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 today.

3.2 Learned State counsel has submitted that the allegations against the petitioner are serious in nature as he has enticed away the daughter of respondent No.2. He, however, does not dispute the factum of petitioner and respondent No.3 having married each other.

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.2 on 30.05.2018 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 08.05.2018 whereinafter they were granted protection also by the Hon’ble Allahabad High Court (Annexure P-2). The victim had solemnized marriage on her own volition. The purported victim namely Rachna @ Archana 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 fact that the victim namely Rachna @ Archana has sworn an affidavit wherein she has categorically stated that she had left the house of her father on her own accord and joined the company of petitioner of her own free will. It is conceded position that victim 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.64 dated 30.05.2018 (impugned FIR) registered under Sections 363, 366 of Indian Penal Code, 1860 at Police Station Bullowal, District Hoshiarpur and all consequential proceedings arising therefrom are quashed.
8. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

November 26, 2024
Ajay

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