



each other and they eloped and performed marriage. In the meantime, respondent No.2 being father of prosecutrix-respondent No.3 lodged the FIR (supra). On 18.06.2021, prosecutrix-respondent No.3 went to her parental home and informed about solemnization of marriage with the petitioner. Both were major at that time.

Thereafter, respondent No.2 approached the jurisdictional police authorities on 06.08.2024 to cancel the FIR (supra) by filing the affidavit (Annexure P-2) that respondent No.3 was major at the time of alleged incident and after performing marriage with the petitioner, they are cohabiting as husband and wife and the couple has been blessed with two daughters. Birth certificate of one daughter namely Mahi Raikwar dated 14.12.2021 is annexed with the present petition as Annexure P-4. The prosecutrix-respondent No.3 has already been examined by learned trial Court as PW2 and she has not supported the case of the prosecution, therefore, she has been declared hostile.

At this stage, Mr. Manish Dhankhar, Advocate appears on behalf of respondents No.2 & 3 and files his Vakalatnama in the Court today, which is taken on record. He submits that continuation of the proceedings in the FIR (supra) is sheer abuse of process of law, as the petitioner and respondent No.3 are legally wedded couple and two daughters have been born out of the wedlock.

Learned State counsel appears on advance notice and seeks short accommodation to verify the factum of marriage between the petitioner and respondent No.3 as well as birth of the child on 14.12.2021 as discernible from Annexure P-4.

Adjourned to 27.09.2024.

3. Learned State counsel, on instructions from ASI Satendernath, submits that the veracity of the marriage and the birth of the daughters has been verified and it has been found that petitioner and respondent No.3 are cohabiting together as husband and wife and both of them are blessed with two daughters. Learned State counsel further submits that the prosecutrix/respondent No.3 has appeared before the jurisdictional Magistrate



and her statement under Section 164 Cr.P.C. was recorded, in which, she has clearly stated that she has married with the petitioner and further, the petitioner is the biological father of the elder daughter, namely Mahi Raikwar, according to DNA report. Even, the prosecutrix/respondent No.3 has reiterated about her marriage with the petitioner and birth of the daughters, when she appeared as PW-2 before the learned trial Court.

4. Learned counsel for the petitioner submits that respondent No.2 is only informant and the case of the petitioner is squarely covered by the ratio of law laid down in *K. Dhandapani v. The State 2022(2) R.C.R.(Criminal) 987* and *Devendranath v. State of U.T. Chandigarh and Others* bearing No.CRM-M-23281-2023.

5. Moreover, a Full Bench of Delhi High Court in '*Court on its Own Motion (Lajja Devi) Vs. State*' 2012 (4) CCR 72, has categorically held that in case, the prosecutrix/victim is more than 16 years of age and makes a statement to the effect that she left of her own volition and records a statement indicating that the consent was without any force, coercion or undue influence, the Court will be within its power to accept the statement and quash proceedings under Sections 363 or 376 of IPC. It has been further held that the FIR (supra) can be quashed if after attaining the age of majority, she affirms and reiterates her consent.

6. Having heard the learned counsel for the parties and after perusing the record with their able assistance, it transpires that respondent No.3 solemnized marriage with petitioner. The marriage between two persons who do not satisfy the age criterion, as laid down by Section 5 of the Hindu Marriage Act, 1955, does not become void *ab inito*. Such a marriage would be voidable at the instance of the minor party. Therefore, in absence of such



declaration in view of the Prohibition of Child Marriage Act, 2006, the marriage subsists and the husband can be the legal guardian of his minor wife, as reaffirmed by a Division Bench of this Court in ***Mamta v. Rohan Verma 2022(2) R.C.R.(Civil) 349***. A Full Bench of Delhi High Court in ***Court on its Own Motion(Lajja Devi) versus State 2012(4) CCR 72*** has held that if the girl is more than 16 years of age and makes a statement to the effect that she left of her own volition and records a statement indicating that the consent was without any force, coercion or undue influence, the Court will be within its power to accept the statement and quash proceedings under Sections 363 or 376 of the IPC. It has been further held that the FIR can be quashed if after attaining the age of majority, she affirms and reiterates her consent.

7. Respondent No.3 has now attained the age of majority and wants to continue with her matrimonial life and she is happily married to the petitioner. If the criminal proceedings against the petitioner allowed to continue, not only will it lead to unnecessary incarceration of the petitioner but also leave respondent no.3 bereft of financial and emotional support. Thus, no useful purpose would be served by continuing the proceedings as the chances of conviction are abysmal. The continuance of the present proceedings in the present case would be nothing but wastage of valuable judicial time, especially, when the Courts are already over-burdened.

8. In view of above facts and circumstances, the present petition is allowed.

9. Accordingly, the FIR No.135 dated 15.06.2021 under Section 346 of IPC (Section 346 of IPC was deleted and Section 6 of the Protection of Children from Sexual Offences Act, 2012 was added later on), registered at



Police Station Sushant Lok, Gurugram (Annexure P-1) and all other consequential proceedings arising therefrom, are quashed qua the petitioner.

September 27, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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|------|---------------------------|--------|
| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |