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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of decision: 24.09.2024

Vipan Kumar @ Vipan Chaudhary

...Petitioner

V/s

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Kuldeep Singh Saini, Advocate for the petitioner.
Mr. Adhiraj Singh Thind, AAG Punjab.
Mr. Gagandeep Singh, Advocate for respondent No.2.

SUMEET GOEL, J. (Oral)

1. The present second petition has been filed under Section 528 of BNSS, 2023, by the petitioner seeking quashing of FIR No.69 dated 04.06.2024 (impugned FIR) registered under Sections 376(2)(n) and Section 6 of POCSO Act 2012 at Police Station Anandpur Sahib, District Rupnagar and all consequential proceedings arising therefrom. It is worthwhile to note herein that the petitioner had earlier approached this Court seeking quashing of the instant FIR, which stands dismissed as withdrawn on 29.08.2024, as the same was not maintainable in view of judgment rendered by this Court titled as "*Abhishek Jain vs. State of U.T., Chandigarh and another (CRM-M-31808-2024) 2024:PHHC:085784*" and no opinion on merits was expressed therein.

2. It would be pertinent to refer herein to the factual matrix of the present *lis*:



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(i) The impugned FIR, as spelt out in the present petition, is as follows:

“Copy of statement Statement of Gurpreet Kaur Wife of Vipan Chaudhary son of Gurmail Chand resident of Village Gunaru police station Sri Anandpur Sahib District Rupnagar Age about Date 9-6-2006 Mobile: 88378-25867 stated that I am resident of the above said address and passed +2 Education from Girls High School Sri Anandpur Sahib in the year 2023. I used to live at home after my studies, my father works as a mason and my mother does housework. Vipan Kumar who is a tractor driver who has his own tractor used to come and go frequently in our village Agmapur with whom I had a conversation at the beginning of the 9th month in the year 2023. Vipan Kumar talked with me from his M.No 98140-75735 on my no. 88378-25867 and sometimes Vipan Kumar took me to Anandpur Sahib in Hotel and had sex with me there to which I told many times that I want to have sex after marriage. But he used to have forced sexual relations with me in the hotel he took me to, I don't know anything about. Vipan Kumar made relations with me several times and lastly I made physical relation with Vipan Kumar in January and thereafter, I started feeling pain and after checkup, I found out that I am going to be the mother of Vipan Kumar's child. Then I ran away from home and get married with Vipan Kuamr with my consent. I used to live with Vipan Kumar. Today on 4- 6-2024 my health suddenly deteriorated, so Vipan Kumar brought me to Civil Hospital Sri Anandpur Sahib for treatment and admitted me and at around 7:00 in the morning and a girl was born. Me and the child are perfectly fine and under treatment. Legal action should be taken. Statement has been recorded read and heard and is correct. The statement has been made in full conscious mind in presence of my mother. SD/-Gurpreet Kaur.”

The complainant/informant, who is also the victim in the impugned FIR, is Gurpreet Kaur, who has been impleaded as respondent No.2 (herein).

(ii) The petitioner has pleaded that he got married with the complainant-victim (respondent No.2), namely Gurpreet Kaur, on 18.05.2024. It has been further pleaded that the complainant/victim, who is his legally wedded wife, was pregnant at the relevant time and had visited



the Government Hospital, Anandpur Sahib, for a medical check-up as she was feeling unwell. During her visit to the hospital, she experienced complications and subsequently delivered a female child on 04.06.2024 at the said hospital. It is pertinent to mention herein that the hospital staff, upon seeing the date of birth of the victim/respondent No.2, immediately informed the Police, as she was minor, whereupon the FIR *ibid* had been registered. After registration of the impugned FIR, the statement of the victim-respondent No.2 was recorded under Section 161 of Cr.P.C. wherein she stated that she had solemnized the marriage with the petitioner on her own accord, without any pressure or coercion. It has been further pleaded that out of this wedlock, one female child has been born.

(iii) 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 married with the petitioner on her own accord and has been living happily with him.

Indisputably, the victim is herself the complainant/informant and had married with the petitioner. It has been further pleaded that with the intervention of respectables, a compromise has also been effected between the parties and they both are living happily as husband and wife.

(iv) It is in this factual backdrop, that the quashing of the impugned FIR as also all the proceedings arising therefrom, has been sought for.

3. Learned counsel for the petitioners has argued that the petitioner and the victim-respondent No.2 were having an affair whereinafter they got married on 18.05.2024 and the continuation of the proceedings *qua*



of law. Hence, quashing of the impugned FIR as also all proceedings arising therefrom *qua* petitioner 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 victim i.e. respondent No.2, who was minor at the relevant time. Learned State counsel, however, has not disputed the factum of petitioner No.1 and petitioner No.2 having married each other. Furthermore; the learned State counsel has relied upon the reply dated 23.09.2024 (by way of affidavit of Gulneet Singh Khurana, Senior Superintendent of Police, District Rupnagar; relevant whereof reads as under:

“4. V. That thereafter on 06.06.2024, the statement of the prosecutrix was recorded u/s 164 Cr.P.C. before the Ld. Court of JMIC, District Anandpur Sahib wherein, she stated that she came in touch with the petitioner on Instagram and exchanged mobile numbers with each other. Thereafter, in September 2023, she went away from her house with the petitioner and got married after paying obeisance at a temple and started residing at village Ganaru. Thereafter, she gave birth to a minor daughter day before yesterday. That she solemnised marriage with the petitioner out of her own free will and went with him and the petitioner is innocent and he be released. The custody of the prosecutrix was handed over to her mother Bir Kaur.

5. That the deponent has thoroughly perused and considered the aforesaid report of the DSP, Sub Division Sri Anandpur Sahib, District Rupnagar, from which, it has transpired that the circumstances under which the present case/FIR No. 69 (supra) has been registered is the receipt of medical ruqa from the Civil Hospital, Sri Anandpur Sahib regarding the prosecutrix (minor) giving birth to a child and the statement of the prosecutrix wherein, she has alleged her date of birth to be 09/06/2006 and also the fact that the petitioner had forcible intercourse with her on multiple occasions despite her reluctance for intercourse before marriage. It is relevant to mention here that on the date of the delivery of a girl child by the prosecutrix, the prosecutrix was a minor. Since, the prima facie offences u/s 376 (2)(n) IPC and Section 6 of



POCSO Act were found to be made out against the petitioner, therefore, FIR No.69 (supra) was registered.”

3.2 Today, Mr. Gagandeep Singh, Advocate has entered appearance on behalf of respondent No.2 and has filed reply in Court, which is taken on record; relevant whereof reads as under:

“2. That it is pertinent to mention here that the deponent is the wife petitioner and she blessed with baby and they both residing happily in the village and has no objection if the aforesaid FIR is quashed.

3. That the contents of the petition are admitted that matter has been amicably settled between the parties with the intervention of relatives and respectable to maintain the peace and harmony in the family. The deponent does not want to pursue the case against 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 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'être 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 04.06.2024 primarily alleging that the petitioner had developed physical relations with her and whereupon she became pregnant. Thereafter, respondent No.2 had solemnized marriage with the petitioner and started residing with him. As per the undeniable factual position; the petitioner-accused got married with the victim on 18.05.2024. The victim had solemnized the marriage on her own volition. The purported victim, namely Gurpreet Kaur, has wholeheartedly supported the case of the petitioner. 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 06.06.2024, wherein the victim has categorically stated that she has solemnized the marriage with the petitioner voluntarily and started living with him on her own accord. It is conceded position that the impugned FIR was got registered by the victim herself under misunderstanding/misconception. 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 the proceedings emanating therefrom.

Decision

7. Accordingly, the FIR bearing No.69 dated 04.06.2024 (impugned FIR) registered under Sections 376(2)(n) and Section 6 of



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POCSO Act 2012 at Police Station Anandpur Sahib, District Rupnagar and all consequential proceedings arising therefrom *qua* petitioner, are quashed.

8. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

September 24, 2024
Ajay

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