



235-1 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision: 11.11.2024

1. CRM-M-43433-2024 (O & M)

Jakir and another
Versus
...Petitioners

State of Haryana and others
...Respondents

2. CRWP-7608-2024 (O & M)

Saarmeen
Versus
...Petitioner

State of Haryana and others
...Respondents

CORAM: HON’BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Mohammad Arshad, Advocate
and Mr. Narayan Har Gupta, Advocate
for the petitioner(s).

Mr. Intizar-Ul-Hasan, Advocate
for respondent No.3 in CRM-M-43433-2024
and respondent Nos.7 to 15 in CRWP-7608-2024.

Mr. Vikas Bharadwaj, AAG Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. This common order shall dispose of both the above mentioned cases as they arise from identical factual matrix. However, for the sake of brevity, the facts are taken from *CRM-M-43433-2024* titled as *Jakir and another vs. State of Haryana and others*.

2. The present petition is preferred under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as ‘BNSS’)



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seeking quashing of FIR No. 186 dated 05.07.2024 registered under Sections 137, 3(5), 87 of the Bharatiya Nyaya Sanhita, 2023 (hereinafter referred to as 'BNS') at Police Station Nagina, District Nuh.

3. Succinctly, the facts, as alleged by the prosecution, are that on 04.07.2024, the respondent No.3-complainant (father of the victim) got a call from his home that his daughter (respondent No.2- the victim) has been kidnapped in a Swift car by petitioner Nos.1 and 2, a driver and other residents of Madhi. The complainant and her family searched for them but could not find them.

4. Learned counsel for the petitioners *inter alia* contends that petitioner No.2 and respondent No.2 knew each other for the last 6 months. They fell in love and decided to get married. However, their relationship was opposed to respondent No.3, who fixed her marriage with someone else. Since respondent No.2 was major at that time, she eloped with petitioner No.2 and performed marriage on 13.08.2024 as discernible from the *nikkahnama* (Annexure P-3). The consensual nature of their relationship is bolstered by the fact that respondent No.2 has also filed a petition (CRWP-7608-2024) seeking protection from her own family.

5. Learned counsel for respondent No.3 opposes the prayer of the petitioners and contends that the veracity of the marriage certificate has not been examined till date.

6. Having heard the learned counsel for the parties and after perusing the record with their able assistance, it transpires that no document except for the Aadhar card of respondent No.2 was available to ascertain her age and thereby consent. Therefore, an ossification test was ordered to be conducted on

respondent No.2 by this Court vide order dated 01.10.2024. The Director,



Postgraduate Institute of Medical Education and Research (PGIMER), Chandigarh was directed to constitute a Medical Board for the said purpose and respondent No.2-Saarmeen was also directed to appear before it on 10.10.2024.

7. The report of the ossification test dated 18.10.2024 concluded that the age of respondent No.2 is between 17 to 20 years. It is well understood that ossification test does not provide a precise age but only gives an approximation to assist that Court in the adjudication process. A two Judge bench of the Hon'ble Supreme Court in *Mukarrab and others vs. State of U.P. (2017) 2 SCC 210*, speaking through Justice R. Banumathi, has opined as follows:

*“10. Age determination is essential to find out whether or not the person claiming to be a child is below the cut-off age prescribed for application of the Juvenile Justice Act. The issue of age determination is of utmost importance as very few children subjected to the provisions of the Juvenile Justice Act have a birth certificate. As juvenile in conflict with law usually do not have any documentary evidence, age determination, cannot be easily ascertained, specially in borderline cases. **Medical examination leaves a margin of about two years on either side even if ossification test of multiple joints is conducted.**”*

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25. Having regard to the circumstances of this case, a blind and mechanical view regarding the age of a person cannot be adopted solely on the basis of the medical opinion by the radiological examination. At page 31 of Modi's Text Book of Medical Jurisprudence and Toxicology, 20th Edn., it has been stated as follows:

*“In ascertaining the age of young persons radiograms of any of the main joints of the upper or the lower extremity of both sides of the body should be taken, an opinion should be given according to the following table, **but it must be remembered that too much reliance should not be placed on this table as it merely indicates an average and is likely to vary in individual cases even of the same province owing to the eccentricities of development.**”*

Courts have taken judicial notice of this fact and have always held that the evidence afforded by radiological



examination is no doubt a useful guiding factor for determining the age of a person but the evidence is not of a conclusive and incontrovertible nature and it is subject to a margin of error. Medical evidence as to the age of a person though a very useful guiding factor is not conclusive and has to be considered along with other circumstances. ” (emphasis added)

8. Therefore, in an event where the range is such that the upper limit would work to the benefit of the accused while the lower limit would implicate him, the Court must take into account the upper limit as any ambiguity or obscurity has to be read in favour of the accused. Reliance in this regard can also be placed on the judgment rendered by a Division Bench of the Delhi High Court in ***Court on its own Motion vs. State of NCT of Delhi CrI. Ref 2 of 2024 decided on 02.07.2024*** which answered a reference in this respect, in the following manner, speaking through Justice Manoj Jain:

“46. As an upshot of our foregoing discussion, the Reference is answered as under: -

(i) *Whether in POCSO cases, the Court is required to consider the lower side of the age estimation report, or the upper side of the age estimation report of a victim in cases where the age of the victim is proved through bone age ossification test?*

Ans: In such cases of sexual assault, wherever, the court is called upon to determine the age of victim based on "bone age ossification report", the upper age given in "reference range" be considered as age of the victim.

(ii) *Whether the principle of "margin of error" is to be applicable or not in cases under the POCSO Act where the age of a victim is to be proved through bone age ossification test.*

Ans: Yes. The margin of error of two years is further required to be applied.”(emphasis added)

9. In view of the discussion above, this Court is of the considered opinion that respondent No.2 must be deemed to be a major at the time of the alleged incident. Consequently, it can be safely concluded that she left with



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petitioner No.2 and married him of her own volition. A Full Bench of Delhi High Court in *Court on its Own Motion(Lajja Devi) vs. State 2012(4) CCR 72* has held that the girl aging 16 years or more is eligible to make a statement indicating her consent and the Court will be well within its power to accept the same and quash proceedings under Section 363 or 376 of the IPC. It has been further held that FIR can be quashed if after attaining the age of majority, she affirms and reiterates her consent.

10. The couple had consensually solemnized marriage on 13.08.2024, as reflected by the marriage certificate (Annexure P-3). Petitioner No.2 and respondent No.2 are happily residing with each other as husband and wife. If the criminal proceedings against the petitioners allowed to continue, the marital life of the couple would unjustly be disturbed and leave respondent No.2 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.

11. As far as the CRWP-7608-2024 is concerned, learned counsel for the petitioner has informed the Court that in view of order dated 25.09.2024 passed by this Court the couple has already moved a representation before the jurisdictional police authorities seeking protection to their life and liberty at the hands of the family of respondent No.2. As such, he does not want to press the prayer made herein further.

12. Accordingly, this Court concludes as follows:

- (i) The petition bearing No. CRM-M-43433-2024 is allowed



and the FIR No. 186 dated 05.07.2024 registered under Sections 137, 3(5), 87 of the Bharatiya Nyaya Sanhita, 2023 at Police Station Nagina, District Nuh is hereby quashed qua the petitioners, namely Jakir and Warish.

(ii) The petition bearing No. CRWP-7608-2024 stands disposed of as the petitioner therein, namely Saarmeen, has availed an alternate remedy and submitted a representation before Superintendent of Police, Nuh (Mewat) and SHO, PS Nagina (Annexure P-3 in CRWP-7608-2024), in pursuance of the order passed by this Court on 25.09.2024.

(iii) Pending miscellaneous application(s) in both of the abovementioned petitions, if any, shall also stand disposed of.

November 11, 2024
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(HARPREET SINGH BRAR)
JUDGE

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