



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-53875-2022

Date of decision: 29.07.2024

Nishad Ansari and another

...Petitioners

V/s

State of Punjab and others

...Respondents

CORAM: HON’BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Sahil Vashishat, Advocate for the petitioners.
Mr. Adhiraj Singh Thind, AAG Punjab.
Mr. Shubham Goyal, Advocate
as Legal Aid Counsel for respondent No.2.
Ms. Aakanksha Sawhney, Advocate as Legal Aid Counsel
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 petitioners for quashing of FIR No.198 dated 02.07.2022 (impugned FIR) registered under Sections 363/366/34 of Indian Penal Code, 1860 at Police Station Sahnewal, District Ludhiana, Punjab 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 Harpal Chauhan Son of Vidya Dhar Chauhan Resident Village Kol Police Station Badlapur District Jaunpur UP presently Resident Street No. 21 Opposite Bengali Market Guru Ram Das Nagar Makkar Colony Dhandari Kalan Ludhiana Police Station Sahnewal Aged about 45 Years



Phone No. 96465-35668 stated that I am a resident of the above address and working as a painter. I was married to Vimala Devi in 1999. I have two sons 'Vikash and Naveen' and two daughters. My daughter Anshu Chauhan aged 20 years who passed +2 and which does housework. There is a fast food shop in front of my house. My daughter Anshu Chauhan used to buy food from that shop. In the shop one boy Nishad Ali son of Usman was working from Giaspura Ludhiana. Who harassed my daughter and said that I have to get married only with you. When my daughter told me, I explained to him and told his mother about it. But his mother was repeatedly saying that she will marry whoever is my son's choice, if you don't, we will take her by force. Today at 1:30 PM my daughter Anshu Chauhan left home without telling anyone. She left the house with her Aadhaar card, 20000/- rupees and other jewelry. We find her everywhere but she did not find anywhere. Now I am very sure that my daughter Anshu Chauhan has been taken away by Nishad Ali and her mother with the intention of marrying her. I have written a statement to you after telling you the truth. Statement by Harpal Chauhan 96465-35668 verified by Raghveer Singh ASI Choki Kanganwal Police Station Sahnewal Ludhiana Dated July 02, 2022”

The complainant/informant in the impugned FIR is one Harpal Chauhan, who has been impleaded as respondent No.2 herein and the victim is his daughter namely Anshu Chauhan, who has been impleaded as respondent No.3 (herein).

(ii) It is pleaded in the petition 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 No.1 on her own will and she does not want to live with her parents. As the victim-respondent No.3 refused to go with her parents, the Court below sent her to State Protective Home, Basti Gujja, Jalandhar.

(iii) It is worthwhile to note that, complainant - respondent No.2 (herein) has entered appearance before this Court on 18.05.2023 and made a



statement that he has no objection if the impugned FIR is quashed. Thereafter, concededly, the petitioner No.1 was got married with the victim (respondent No.3 herein) and had been living happily together as husband and wife. It has been further pleaded that out of this wedlock, one girl 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 petitioners has argued that the petitioner No.1 and the victim were having an affair whereinafter they got married on 10.09.2023, the victim was major at the time of marriage as also registration of the impugned FIR; the petitioner No.1 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 The State of Punjab has filed a reply dated 25.01.2023, relevant whereof reads as under:-

“2. That on 07.07.2022, the petitioners were arrested and the prosecutrix was also recovered on 07.07.2022 and her statement u/s 164 Cr.P.C. was got recorded before the Ld. Magistrate. However, the prosecutrix refused to get herself medically examined and the prosecutrix stated before the Ld. Magistrate that she does not want to live with her parents. Considering all the facts, the Court of Ms. Sherryl Sohi, Ld. JMIC, Ludhiana vide order dated 11.07.2022 ordered to keep Anshu Chauhan (the daughter of complainant) in State Protective Home, Basti Gujja, Jalandhar and since then, she is under the care and custody of the said State Protective Home.

3. That after completion of the investigation, Challan/Final Report u/s 173 Cr.P.C. has been presented against the petitioners before the Ld.



Court on 05.09.2022 but Charges have not been framed as yet and now, the case is pending in the Court of Sh. Harbans Singh Lekhi, Ld. Addl. Sessions Judge, Ludhiana and is fixed for 10.02.2023 for awaiting orders of this Hon'ble Court as the further proceedings have been stayed by this Hon'ble Court vide order dated 21.11.2022 passed in the present petition."

Learned State counsel has made submissions in tandem with the aforesaid short reply filed by the State of Punjab.

3.2. Learned counsel appearing for respondent No.2 has, though made a statement before this Court on 18.05.2023 that he has no objection in case the impugned FIR is quashed and petitioner No.1 solemnizes marriage with his daughter, however, today, learned counsel appearing on behalf of respondent No.2 has submitted that petitioner No.1 has enticed away the minor daughter of respondent No.2 and as such, the allegations against the petitioners are serious in nature. Hence the instant petition has been opposed by learned counsel for respondent No.2.

3.3. Learned counsel appearing for respondent Nos.3 has made submissions in tandem with the submissions made by learned counsel for the petitioners.

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 02.07.2020 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 10.09.2023 whereinafter they are living happily. The victim had attained the age of majority at the time of marriage & had solemnized marriage on her own volition. The purported victim-respondent No.3 has wholeheartedly supported the case of the petitioners-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 161 of Cr.P.C., 1973 on 07.07.2022 before the Police wherein the victim has categorically stated that she had left the house of her father on her own accord and joined the company of petitioner No.1 of her own free will as also in view of the



11.07.2022 wherein the victim has categorically stated that she wanted to live with petitioner No.1 and does not want to go with her parents. It is conceded position that 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.198 dated 02.07.2022 (impugned FIR) registered under Sections 363/366/34 of Indian Penal Code, 1860 at Police Station Sahnewal, District Ludhiana, Punjab and all consequential proceedings emanating therefrom are quashed.
8. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

July 29, 2024
Ajay

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