

2024:PHHC:099325



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

284

CRM M-52539 of 2023
Date of Decision: 29.07.2024

Gurdeep Singh and another ...Petitioners
Versus
State of Punjab and others ... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Bachanpreet Singh, Advocate
for the petitioners.

Mr. Deepinder Singh Brar, Sr. DAG, Punjab.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioners have filed the present petition under Section 482 Cr.P.C. with a prayer to quash the FIR No. 37 dated 26.06.2023 under Section 363 of IPC (Annexure P-1) registered at Police Station Sehna, District Barnala and all subsequent proceedings arising therefrom.
2. The brief fact of the case are that the FIR in the present case was registered on the basis of the statement made by Jasvir Singh @ Seera, father of petitioner No. 2 by alleging that Navdeep Kaur, petitioner No. 2 aged about 23 years is his daughter. On 24.06.2023, when all the family members were not at home, his daughter Navdeep Kaur left home and he had come to know that Gurdeep Singh, petitioner No. 1 had taken away his daughter Navdeep Kaur, without

his consent. With these broad allegations, the FIR was got registered by father of petitioner No. 2.

3. Learned counsel for the petitioners further contends that in fact both the petitioners are aged about 27 years and 23 years, respectively. In fact, both of them were having love affair and finally they married against the wishes of their family members. The marriage between petitioners No. 1 and 2 was solemnized on 26.06.2023 at Gurudwara Kalgidhar Sahib, village Naraingarh, District Faridkot and a marriage certificate (Annexure P-3) was issued in this regard. Thereafter, both the petitioners had filed a CRWP-8658-2023 titled as **“Navdeep Kaur and another Vs. State of Punjab and others”**, before this Court, which was disposed off by this Court vide order dated 02.09.2023 (Annexure P-4). The petitioners No. 1 and 2 were living as husband and wife and were legally married to each other. Thus, the FIR, which was got registered by respondent No. 4/father of petitioner No. 2 was an abuse of process of the Court.

4. On the other hand, a status report/reply by way of an affidavit of the Deputy Superintendent of Police, Sub-division Tapa, was filed before this Court and the same was taken on record. Learned State counsel is not in a position to rebut the factual submissions made by learned counsel for the petitioners. Even, he has submitted that respondent No. 4/complainant in the present case was

informed, but in spite of service, respondent No. 4/complainant has not appeared before the Court.

5. I have heard learned counsel for the parties and perused the record.

6. In case of run away marriages, this Court in the matter of **Pardeep Kumar Singh Vs. State of Haryana 2008(3) RCR (Criminal) 376** issued the following directions:-

"1. Whenever any intimation is received by the SSP/SP of concerned District regarding the marriage of a young couple with a threat and an apprehension of infringement of the right of life and liberty by the police at the instance of the family members of one of the spouses, the SSP/SP concerned will consider the representation and will himself/herself look into the matter and issue necessary directions to maintain a record of the said intimation under Chapter 21 of the Punjab Police Rules.

2. On receipt of above said intimation of marriage by any police officer, necessary directions will be issued to the concerned Police Station to take necessary steps in accordance with law to enquire into the matter by contracting the parents of both boy and girl. The matter regarding age, consent of the girl and grievance of her family will be determined. In the eventuality of any complaint of kidnapping or abduction having been received from any of the family members of the girl generally the boy (husband) will not be arrested unless and until the prejudicial statement is given by the girl (wife). Arrest should generally be deferred or avoided on

the immediate receipt of a complaint by the parents or family members of the girl taking into consideration the law laid down by Hon'ble Supreme Court in Joginder Kumar's case (supra);

3. If the girl is major (above 18 years), she should not forcibly be taken away by police to be handed over to her parents against her consent. Criminal force against the boy should also be avoided.

4. So far as the threat to the young couple of the criminal force and assault at the hands of the private persons is concerned, it would always be open to the police to initiate action if any substantive offence is found to have been committed against the couple;

5. In case of any threat to the breach of peace at the hands of the family members of the couple it will always be open to the State authorities to take up the security proceedings in accordance with law;

6. It will not be open to the "run away couple" to take law in their hands pursuant to the indulgence shown by the police on the basis of their representation sent to the SSP/SP of the concerned District;

7. If despite the intimation having been sent to the SSP/SP there is an apprehension or threat of violation of right of personal life and liberty or free movement, the remedy of approaching the High court should be the last resort;

8. In case there is an authority constituted for issuance of marriage certificate as per the law laid down by Supreme Court in Seema's case (supra) in the concerned Districts, the couple of so called 'run away marriage' should get the marriage registered in compliance with

the directions of the Supreme Court and a copy of the same should also be forwarded to the police along with the representations or any time subsequent thereto.

9. Nothing said here-in-above will prevent the immediate arrest of a person who fraudulently entices a girl with false promises and exploits her sexually as per the statement of the girl."

7. Since, the petitioners have performed marriage with each other and are staying as married couple since long, therefore, the continuation of criminal proceedings would jeopardise their married life. It is a fit case where the inherent jurisdiction of this Court under Section 482 Cr.P.C. can be exercised with a view to prevent the abuse of the process of law and to secure the ends of justice. Further, even otherwise, the chances of ultimate conviction of the petitioner No. 1 are very bleak.

8. Still further, in the present case, the petitioner No. 1 has been charged with the offence under Section 363 IPC. Section 363 IPC provides for punishment for kidnapping. Section 361 IPC defines kidnapping from lawful guardianship and the same has been reproduced as under:-

“Section 361 IPC Kidnapping from lawful guardianship.

Whoever takes or entices any minor under [sixteen] years of age if a male, or under [eighteen] years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian,

is said to kidnap such minor or person from lawful guardianship.

Explanation.--The words "lawful guardian" in this section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception.--This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose".

9. From a bare perusal of the allegations levelled by the complainant in the FIR, it is apparent that the ingredients of the offence defined under Section 361 IPC are completely missing in the instant case. The petitioner No. 2, who is a female, is aged about 23 years and she had herself left her parental home and married the petitioner No.1. Consequently, it cannot be said that the petitioner No. 2 was kidnapped from the lawful guardianship.

10. In view of the above submissions, the continuation of the criminal proceedings arising out of FIR No. 37 dated 26.06.2023 under Section 363 of IPC registered at Police Station Sehna, District Barnala (Annexure P-1) is an abuse of the process of the law and the same are liable to be quashed.

11. Consequently, the FIR No. 37 dated 26.06.2023 under Section 363 of IPC registered at Police Station Sehna, District Barnala (Annexure P-1) and all subsequent proceedings arising

therefrom are hereby ordered to be quashed and the petition stands allowed.

29.07.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

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