



CRM-M-46677-2019

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-46677-2019

Date of decision: 28.10.2024

Nishan Singh

....Petitioner

V/s

State of Punjab and others

....Respondents

CORAM: HON’BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Johny, Advocate for the petitioner.
Mr. Adhiraj Singh Thind, AAG Punjab.
Mr. Amit Arora, Advocate for respondent No.2.
Mr. Satish Sharma, Advocate 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 petitioner for quashing of FIR No.0086 dated 19.04.2019 (impugned FIR) registered under Sections 363, 366-A & 120-B of Indian Penal Code, 1860 at Police Station City Tarn Taran, District Tarn Taran, 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 Gurcharan Singh son of Jarnail Singh, Caste Jat, Resident of Kakka Kandiayala aged about 50 years, mobile No. 62543-16334. That I am resident of above mentioned address and running a karyana shop in my village. I have three children, two daughters and one son. My one daughter whose name is Inderpreet Kaur. On 18.04.2019, I and my family members were slept in the courtyard of house after taking the dinner. My daughter



Inderpreet Kaur was slept with us on the near bed. At about 4.00 AM when I wake up and found that my daughter was not present on her bed and I telling our family members and traced her. I full doubt, that Nishan Singh son of Satnam Singh, Caste Jat, resident of our village Kakka Kandiayala gave the assurance to marry with her and took her. Nishan Singh done the said act on the opinion of his mother Manjit Kaur wife of Satnam Singh. I searched my daughter till now and she not found. Legal action be taken against Nishan Singh above said. Sd/- Gurcharan Singh above said, Sd/- Amarjit Singh ASI PP, Bus Stand, Police Station City Tarn Taran dated 19.04.2019.”

The complainant/informant in the impugned FIR is one Gurcharan Singh, who has been impleaded as respondent No.2 herein and the victim is her daughter namely Inderpreet Kaur, who has been impleaded as respondent No.3 (herein).

(ii) It is pleaded in the petition that marriage of petitioner was solemnized with respondent No.3 on 26.09.2019. It has been further pleaded that after solemnization of marriage, the petitioner and the victim namely Inderpreet Kaur filed a petition seeking protection of their life and liberty before this Court vide CWP-29704-2019 which was disposed of vide order dated 16.10.2019; relevant whereof reads as under:

“The writ petition is disposed of with a direction to respondent No.2-Senior Superintendent of Police, City and District Tarn Taran, that in case any representation is filed seeking protection of life and liberty, the contents thereof be duly verified and if necessary, requisite steps be taken strictly in accordance with law for grant of protection of life and liberty to the petitioners. It is clarified that this order shall not be treated as a stamp of approval or validity by this Court as to marriage of the parties, if any.

It is also made clear that this order shall have no import in the event any challenge is made as to the validity of the marriage.”

Indisputably, the petitioner got married with the victim (respondent No.3 herein) and had been living happily together as husband



been born on 28.01.2020. It is worthwhile to note that during the course of proceedings in the present petition, the victim i.e. respondent No.3 has filed an affidavit dated 15.10.2024 and the same reads as under:

“2. That the answering respondent no. 3 has been married to petitioner on 26/09/2019 and now the couple are blessed with a daughter named Anshdeep Kaur who is aged 3 year (DOB 28/01/2020).

3. That the deponent and Nishan Singh are living a married happy life. The FIR in question was registered at behest of father of the answering respondent as he was against the marriage of answering respondent with the petitioner.

4. That the deponent has no objection in case the FIR no. 86 dated 19- 04- 2019 under sections 363, 366-A, 120-B of IPC at Police Station City Taran Tarn is quashed as the continuation of proceedings will be abuse of process of law. The answering respondent is well settled in her matrimonial home with Nishan Singh the petitioner.

It is therefore respectfully prayed that the petition be accepted and the FIR no. 86 dated 19-04-2019 under sections 363, 366-A, 120-B of IPC at Police Station City Taran Tarn be kindly quashed, in the interest of justice.”

(iii) 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 petitioner has argued that the petitioner and the victim were having an affair whereinafter they got married on 26.09.2019 and the petitioner 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 short reply dated 13.01.2020, relevant whereof reads as under:-

“5. That the statement under section 164 Cr.P.C of the prosecutrix respondent No.3 has been got recorded by the Illaqa/Area Magistrate, Tarn Taran on 07.01.2020 and the police official alongwith prosecutrix



went to Civil Hospital, Tarn Taran for her medical examination on 08.01.2020 but the prosecutrix has refused to get conduct her medical examination as such the medical examination of the prosecutrix could not be conducted.

6. That there is sufficient evidence on record against the petitioner and the petitioner is likely to be convicted in the present case.

7. That in view of the section 363, 366-A of IPC, the alleged marriage of petitioner with the respondent No.3 is void because petitioner has enticed away the minor daughter of the respondent No.2 from the lawful guardianship of respondent No.2 and under the garb of the present petition, the void marriage (if any) cannot become valid. Further not only petitioner is liable for punishment under sections 363, 366, 120-B of Indian Penal Code but also the person, who was party to this marriage, are liable to be punished in accordance with law.

8. That whether there is consent or no consent, kidnapping of a minor girl from the lawful custody of the guardian is punishable under section 363, 366-A of Indian Penal Code. Such offences are offences both against the individual and the society at large.”

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 submits that allegations against the petitioner are serious in nature as he has enticed away the daughter of respondent No.2.

3.3. Learned counsel appearing for respondent No.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 ruminations, 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 19.04.2019 primarily alleging that her daughter was enticed away by the accused. As per the undeniable factual position; the petitioner-accused got married with the victim on 26.09.2019 they were granted protection also by this Court vide CWP-29704-2019. The victim had solemnized marriage on her own volition. The purported victim-respondent No.3 has wholeheartedly supported the case of the petitioner-accused. No fruitful purpose would be served by relegating the matter for trial especially in view of the affidavit sworn in before this Court on 15.10.2024 wherein the victim has categorically stated that she is living a happy married life with the petitioner and she has no objection if the instant FIR be quashed. It is conceded



position that victim i.e. respondent No.3 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.0086 dated 19.04.2019 (impugned FIR) registered under Sections 363, 366-A & 120-B of Indian Penal Code, 1860 at Police Station City Tarn Taran, District Tarn Taran, Punjab and all consequential proceedings arising therefrom are quashed.
8. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

October 28, 2024
Ajay

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