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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Decision: 09.01.2024**

+ **W.P.(CRL) 1064/2023**

ARIF KHAN

..... Petitioner

Through: Mr. Dhiraj Kumar Singh & Mr.
Ranjan Kumar, Advocates.

versus

THE STATE AND ANR.

..... Respondents

Through: Mr. Amol Sinha, ASC for the
State with S.I. Surekha, P.S.:
Fatehpur Beri.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J. (ORAL)

1. This judgment portrays the story of love between Ms. 'A', who was allegedly a minor as per the State and Mr. Arif Khan, who eloped at the calling of their love. Oblivious of the demands of law, they got married as per Muslim rites and ceremonies, since they both belonged to the same religion, with the blessings of parents of Mr. Khan as the parents presumed that the marriage between the parties could be solemnized and respected the feeling of love and affection between Ms. 'A' and their son. The story of this union was unfortunately interrupted by the entry of investigating agency, which was to work as per existing law. At the time of recovery of Ms. 'A', she was five months pregnant. She refused to abort the child as it was born out of her marital union and love for Mr. Khan, and in her statements before police as well as



before the Magistrate, she stood by her stand of love for the man, she had married. In none of the statements at any stage after lodging of the FIR by the father of Ms. 'A', did Ms. 'A' allege that she had been kidnapped or was a minor or was sexually assaulted or sexual intercourse was committed by Mr. Khan against her will.

2. Finding discrepancy in the proof of age of Ms. 'A', the investigating agency was bound to file a chargesheet and they did so. Interestingly, though the father of Ms. 'A' had lodged the missing report, the investigation did not reveal any authentic proof of her age. Mr. Khan was apprehended by the police officials on 17.06.2015. At that time, Ms. 'A' was five months' pregnant. Mr. Khan remained in jail till 02.04.2018. However, in the meanwhile, Ms. 'A' patiently waited for him raising the daughter begotten by her due to her consensual physical union with Mr. Khan. Mr. Khan was released on bail on 02.04.2018 and since then, they are living happily, and have given birth to another daughter who is aged about 2 ½ years.

3. Ms. 'A' and Mr. Khan, the petitioners, have approached this Court under Article 226 of the Constitution of India, read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.'), for quashing of FIR No. 19/2015, dated 10.01.2015, registered at Police Station Fatehpur Beri, Delhi for offences punishable under Sections 363/366/376 of the Indian Penal Code, 1860 ('IPC').

4. Mr. Amol Sinha, learned ASC accepts notice on behalf of the State.

5. Learned counsel for the petitioners and learned ASC for the State addressed arguments, which were heard and considered by this Court.



6. Learned ASC for the State argued that respondent no. 2 was a minor at the time of incident and the school record also reflects so. The investigating officer stated that the documents on the basis of which the date of birth was recorded in the school were not available. The parents of respondent no. 2 state that their daughter was major at the time of incident.

7. Ms. 'A' is present before this Court in-person, alongwith the man she loves and married i.e. Mr. Khan and parents of both the parties. She reiterates that she had voluntarily entered into a consensual relationship with the petitioner herein. She also states that she was 18 years of age, at the time of incidence, though it is disputed by the State, since as per school records, she was less than 18 years of age.

8. This Court further notes that the respondent, at the time the petitioner had got arrested, was pregnant, and had made a choice to continue pregnancy, and give birth to a child. This Court while deciding the present petition, takes note of the fact that the parties herein had made a choice with themselves, even though law did not permit them to enter into a marital union. However, she supported the case of the petitioner Mr. Khan, at every stage, and not the case of the State. The parties have now been married for about nine years, and have been blessed with two daughters, and they are happily raising their children.

9. This Court notes that the judicial system is tasked not only with interpreting and upholding the law but also with understanding the dynamics of society. The Court's role extends beyond a mere application and interpretation of statutes. It involves an understanding of the implications of its decisions on individuals and the community at



large. Striking this balance requires a thorough examination of the facts, legal precedents, and the evolving ethos of the society it serves. The Courts must weigh competing interests, considering the impact of its decisions on the parties involved and the broader implications for justice, fairness, and social order.

10. The **dilemma** at times faced by the Court can be of trying to justify the State/Police action against an adolescent couple who married each other and continued to lead a peaceful life and raise a family, and respect for obeying the law of the land. This Court has time and again reached a conclusion that **true love between two individuals**, one or both of who may be minor or minors on the verge of majority, **cannot be controlled through rigours of law or State action**. The cases as the present one are those where the dilemma of the judge, which though may be rare, has to take into account the delicate balance which the constitutional Court or Courts of law have to strike between the law and its strict application and the repercussion of its judgments and orders by application of such laws on the society as a whole and the individuals who are before it.

11. More often than not, the cases as the present one, though have limited individuals in the Memo of Parties of the petitions, however, the effect of the orders in such petitions travel and affect many more beyond the Memo of Parties. For example, in the present case, the future of families of the parties and the two daughters born out of this wedlock, one aged 08 years, who is school going, and the other 2 ½ years old, and the wife who is a house-maker and their beautiful harmonious life, they have built together in the last 09 years, is at stake



and dependent on the outcome of the present petition.

12. **When the scales of justice have to be weighed, they are not always on the basis of mathematical precision or mathematical formulas, but at times, while one side of the scale carries the law, the other side of the scale may carry the entire life, happiness and future of toddlers, their parents and parents of their parents.** The scale that reflects and portrays such pure happiness *sans* any criminality will definitely equal the scale carrying law as the application of law is meant for maintaining rule of law.

13. This Court taking note of the overall facts and circumstances of the case and the fact that in case, the FIR in question, in these peculiar facts and circumstances, is not quashed will result in affecting the future of the daughters born from this union which will result in failure of effective and real justice.

14. In view of the above facts and circumstances, it would be in interest of justice to quash the above-mentioned FIR and the proceedings pursuant thereto.

15. Accordingly, FIR bearing No. 19/2015, dated 10.01.2015, registered at Police Station Fatehpur Beri, for offences punishable under Sections 363/366/376 of the IPC and all consequential proceedings emanating therefrom are quashed.

16. Accordingly, the present petition stands disposed of.

17. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JANUARY 9, 2024/at