



\$~57

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

+ **CRL.M.C. 3964/2024**

NIKHIL & ANR.

.....Petitioners

Through: Mr. Anil Vyas, Advocate
alongwith Both Petitioners-
in-Person.

versus

**THE STATE (NCT OF DELHI)
& ANR.**

.....Respondents

Through: Mr. Manoj Pant, APP for
the State.
SI Parvesh Rawat (P.S.
Sangam Vihar).

**CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN**

ORDER
29.11.2024

%

CRL.M.C. 3964/2024

1. The present petition is filed seeking quashing of FIR No. 130/2022 dated 17.02.2022 registered at Police Station Sangam Vihar, for offence under Section 363 of the Indian Penal Code, 1860 ('IPC'). The chargesheet has been filed in the present case for offences under Sections 363/366 of the IPC and Section 9 of the Prohibition of Child Marriage Act, 2006.
2. The present FIR was registered on a complaint given by Respondent No.2, whereby he had informed the police that on 28.12.2021, his daughter (Petitioner No.2) left home and did not return. After searching for her, Respondent No.2 filed a missing complaint which was later registered as the present FIR.
3. During investigation, Petitioner No.2 in her statement



under Section 161 Code of Criminal Procedure, 1973 stated that she was not kidnapped and she had left the custody of her parents on her own will.

4. Petitioner No.2, in her statement under Section 164 of the Code of Criminal Procedure, 1973, had also stated that she left the custody of her parents on her own accord and wants to live with the Petitioner No.1. She also stated that nothing wrong had happened with her. She stated that she has since married Petitioner No.1 and they are happily residing together.

5. The learned counsel for the petitioners submits that the Petitioner No.1 and Petitioner No.2 are happily married and are living together in harmony. He submits that the possibility of conviction is remote and the continuation of criminal proceedings would cause prejudice to the parties.

6. Petitioner No.2 is now stated to be about 21 years of age and has approached this court seeking quashing of the present FIR. It is stated that Petitioner No.2 was about 17 years and 6 months of age at the time of the alleged incident.

7. The petitioners are present in person before this Court today and state that they are happily residing together as husband and wife for the last three years whereas Respondent No.2, who is the father of Petitioner No.2, is not present in Court. It appears that Respondent No.2/complainant has not accepted the parties' relationship. Both the petitioners have been duly identified by the Investigating Officer.

8. Offences under Sections 363/366 of the IPC and Section 9 of the Prohibition of Child Marriage Act, 2006 are non-compoundable in nature.

9. In ***State of Haryana v. Bhajan Lal*** : 1992 Supp (1) SCC 335, the Hon'ble Apex Court has laid down the test to discern



when quashing is appropriate in exercise of the discretion under Section 528 of the Bharatiya Nagarik Suraksha Sanhita ('BNSS') of 2023 (erstwhile Section 482 of the Code of Criminal Procedure, 1973. The relevant portion of the said judgment is reproduced hereunder:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no



investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) **Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”**

(emphasis supplied)

10. The Hon'ble Apex Court in ***Mafat Lal v. State of Rajasthan*** : (2022) 6 SCC 589 held as under :

7. The High Court although records all such facts, appears to have been swayed with the fact that the abductee was a minor at the time when she left her home and that the appellant had evaded the investigation and had been successful in keeping away from the process of law for several years. The High Court further proceeded on the assumption that the appellant had actually kidnapped/abducted the minor daughter of the complainant.

8. Before this Court, also the abductee has joined the accused as Appellant 2. Once again similar stand has been taken as was taken before the High Court. Both the appellants have filed separate affidavits. Appellant 2 has specifically stated before the High Court as also before this Court that she had left her parental home on her own free volition. The appellants are married since



December 2006 and have been living happily. They have also been blessed with a son in the year 2014 who would now be 8 years old. No fruitful purpose would be served by relegating the matter for conducting the trial as the same would not be conducive for either of the appellants. It would be a futile exercise.

11. The offence of kidnapping under Section 363 of the IPC as alleged in the present case would necessarily involve enticing or taking away a minor under eighteen years of age. In the present case, the abductee had clearly stated that she was neither taken away nor induced and that she had left her home of her own free will.

12. It is not in doubt that the offence under Section 9 of the PCMA is heinous in nature and involve mental depravity. Offences of such nature cannot be quashed merely because the victim has settled the dispute. Such offences, in true sense, cannot be said to be offences *in personam* as the same are crimes against the society.

13. The present case, however, seems to have arisen for the reason of the objections the family of Petitioner No. 2 had with the relationship of Petitioner No. 2 with the Petitioner No.1. Petitioner No. 2, has categorically stated that she got married with the Petitioner No.1 of her own free will and nothing wrong had happened with her. They are married and are happily residing together.

14. In such a scenario, this Court cannot lose sight of the fact that the continuance of the proceedings would only cause undue disturbance in the happily married life of the petitioners.

15. Keeping in view the nature of dispute and the fact that both the petitioners are happily residing together as husband and wife for the last three years, this Court feels that no useful



purpose would be served by keeping the dispute alive and continuance of the proceedings would amount to abuse of the process of Court. I am of the opinion that this is a fit case to exercise discretionary jurisdiction under Section 528 of the CrPC.

16. In view of the above, FIR No. 130/2022 and all consequential proceedings arising therefrom are quashed.

17. The present petition is allowed in the aforesaid terms.

AMIT MAHAJAN, J

NOVEMBER 29, 2024

'Aman'