



2024:DHC:3583



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

Date of decision: 26.04.2024

+ CRL.M.C. 4168/2022
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..... Petitioner

Through: Mr.K.K. Tyagi, Mr.Nishant Kr.
Tyagi, Advs.

versus

STATE OF NCT OF DELHI & ORS. Respondent

Through: Ms.Priyanka Dalal, APP with
SI Amit Beniwal
Mr.Vikas Pahwa, Sr. Adv.
Amicus Curiae with
Mr.Prabhav Ralli and
Ms.Sanskriti Shakuntala Gupta,
Advs.

**CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA**

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.'), seeking quashing of FIR No.0768/2015 registered at Police Station: Vivek Vihar, East Delhi, for offence under Section 363 of the Indian Penal Code, 1860 (in short, 'IPC'). Later, in the charge-sheet, Section 376 of the IPC, Section 6 of the Protection of Children from Sexual Offences Act, 2012 (in short, 'POCSO'), and Section 3 of the Child Marriage Restraint Act, 1929 (in short, 'Child Marriage Act') were also added.



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Facts in brief

2. The facts in brief that gave rise to the present petition are that on 15.08.2015, the respondent no.2/complainant, who is the father of the respondent no.3, filed a complaint at Police Station: Vivek Vihar alleging that the petitioner/accused, aged around 20 years old, had kidnapped his daughter, aged around 16 years. On the said complaint, the above mentioned FIR came to be registered.

3. Subsequently, on 21.08.2015, the parties, that is, the petitioner and the respondent no.3, got married. The marriage certificate shows the age of the respondent no.3 to be 19 years, and that of the petitioner to be 21 years.

4. On 20.02.2020, the respondent no.2 came to the police station and produced the marriage certificate of the petitioner and respondent no.3.

5. Thereafter, on 22.09.2020, the statement of respondent no.2/complainant under Section 161 of the Cr.P.C. was recorded. He acknowledged the relationship between the petitioner and respondent no.3. He also stated that his daughter-respondent no. 3 had married the petitioner of her own free will and now she has two children, a boy aged about 4 years, and a girl aged about 1 ½ year old from the wedlock.

6. On 23.09.2020, the statement of the respondent no.3/victim was also recorded under Section 161 of the Cr.P.C. She stated that she had eloped with the petitioner on her own will and got married to him. She stated that she is happily



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married. Her statement under Section 164 of the Cr.P.C. was also recorded, wherein she reiterated the above.

7. On 22.03.2021, the charge-sheet was filed against the petitioner, without arrest, and Section 376 of the IPC, Section 6 of the POCSO and Section 3 of the Child Marriage Act were added. A Supplementary Charge Sheet has also been filed.

8. The petitioner was summoned in the said case.

9. Being aggrieved of the said proceedings, the petitioner has filed the present petition, praying for quashing of the above FIR and the consequential proceedings, stating that the petitioner and the respondent no. 2 are happily married and have children, and further prosecution of the petitioner in these circumstances would be an abuse of the process of the law.

10. The petitioner, respondent no. 2, and respondent no. 3 have appeared in person before this Court and pleaded that the subject FIR and the consequent proceedings be quashed.

11. On 05.01.2024, this Court thought it necessary to consider the question as to when a child-prosecutrix is taken away by the accused, though admittedly with her consent, and they are living happily on attaining majority, would any purpose be served in keeping the criminal proceedings alive, or can the same be quashed by this Court in exercise of its inherent powers under Section 482 of the Cr.P.C..

12. To assist this Court, learned Senior Counsel- Mr. Vikas Pahwa, was requested to act as *Amicus Curiae*.



Submissions by the learned counsel for the petitioner

13. The learned counsel for the petitioner submits that the FIR and the consequent proceedings are liable to be quashed as the relationship between the petitioner and the respondent no.3 was consensual. He states that the petitioner and respondent no.3 got married on 21.08.2015. He further submits that the Marriage Certificate shows that the petitioner and the respondent no.3 were consenting adults on the date of the marriage. He submits that they also have two children, who are now aged 8 years and 5½ years.

14. The learned counsel for the petitioner further submits that the respondent no.2/complainant, in his statement under Section 161 of the Cr.P.C., accepted and supported the relationship, and further stated that there is no requirement to look for his daughter anymore as she is happy in her matrimonial home and he himself will produce her.

15. He submits that the respondent no.3 has also in her statements under Sections 161 and 164 of the Cr.P.C., stated that she ran away with the petitioner of her own free will. She further stated that they are living together happily and have also been blessed with two children, and that she would like to continue to live with the petitioner.

16. He submits that in light of the above, letting the proceedings proceed against the petitioner, would be an abuse of process of law, and that no purpose would be served in continuing the same.



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Submissions by the learned APP

17. On the other hand, the learned APP submits that proceedings against the petitioner cannot be quashed as the respondent no.3 was a minor on the date she ran away and even on the date of her alleged marriage. She submits that therefore, the FIR cannot be quashed only on the basis of the consent of the parties, as the consent of the minor as on the date sexual relationship was established and marriage performed, in any case, would be immaterial.

Submissions by the learned Amicus Curiae

18. Mr. Pahwa, the learned Senior Counsel and *Amicus Curiae* appointed by this Court submits that the Court has to be mindful of the fact that the sexual relationship between minors may be without any criminal intent. In such cases, the courts have shown an inclination to quash the proceedings. In support, he places reliance on *Mahesh Kumar v. State (NCT of Delhi)*, Neutral Citation No.2023:DHC:3151; *Arjun Kamti v. State (NCT of Delhi)*, 2023 SCC OnLine Del 4735; *Vikrant v. State & Anr.*, 2023 SCC OnLine Del 2979; *Dr. Amir Khan v. State*, 2022 SCC OnLine Del 1607; *Kundan v. State*, 2022 SCC OnLine Del 4809; and, *Tarun Vaishnav v. State of Rajasthan through PP, S.B.*, 2022 SCC OnLine Raj 2237.

19. He submits that the object of Sections 375/376 of the IPC and the POCSO Act is to protect minor from sexual exploitation and not to penalise consensual and healthy “romantic adolescent relationship”.



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20. He submits that there is also an ambiguity on the correct age of the respondent no. 2 as there is a difference in her age reflected in her Aadhaar Card and the school certificates, which do not appear to be based on any authentic documents.

21. He submits that there is also a debate on reducing the age for consent for a minor girl in circumstances like the present.

Analysis and findings:

22. I have considered the submissions made by the learned counsels.

23. As noted hereinabove,

(i) the FIR was registered on 15.08.2015 on a complaint of the respondent no. 2 that his daughter/respondent no. 3, aged 16 years, has been taken away by the petitioner, who is aged around 20 years old. There is therefore, not much gap between the age of the petitioner and the respondent no. 3;

(ii) the respondent no. 3 has consistently maintained that she had gone with the petitioner with her own free will;

(iii) the petitioner and the respondent no. 3 have got married as per Hindu rites and ceremonies at the Arya Samaj Mandir, Begum Bagh, Aligarh, Uttar Pradesh, on 21.08.2015. In the Marriage Certificate, age of the respondent no. 3 is reflected as 19 years, while the age of the petitioner is reflected as 24 years;



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(iv) as per the prosecution, based on the educational documents of the respondent no. 3, her date of birth is 26.02.2001. As per the Aadhaar Card annexed with the petition, her date of birth is 01.01.1998. Therefore, as on the date of the marriage, the age of respondent no. 3 would have been around 15 ½ years (as per the school certificates), and 17 years 8 months (as per the Aadhaar Card). She was not a major on the date of the marriage;

(v) The petitioner and the respondent no. 3 have been blessed with two children, a boy and a girl, who would presently be aged around 8 years and 5½ years. The family is living happily together. The respondent no. 3 is now a major.

24. The Child Marriage Act was promulgated to eradicate the evil of child marriage which had the potentiality of danger to the life and health of a female child who could not withstand the stress and strains of married life. The Act was replaced by the Prohibition of the Child Marriage Act, 2006, with the same object. What is however important to note is that as against the parties to a child marriage, the marriage is not void but is voidable at the option of the child.

25. Similarly, the POCSO Act has been promulgated to provide for the protection of children from the offences of sexual assault, sexual harassment, etc.. Its object is to protect the children from various types of sexual offences.



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26. Of late, however, the Courts are faced with petitions where children, who are about to attain the age of majority, in ignorance of the statutory prohibitions and restrictions and consequences, in the name of love, commit acts which would otherwise amount to offence under the provisions of the Child Marriage Act, POCSO Act, and the IPC. Though, being minor, their consent is immaterial, however, factually it is there. This situation makes the Courts face with two consequences, either to go strictly by the mandate of the statute and convict the boy and impose punishment on him, which is rather severe in these statutes, or to exercise its power under Section 482 of the Cr.P.C. to protect the otherwise innocent children/adult by quashing the criminal proceedings. The Courts when faced with such a dilemma, has been adopting the route of exercising its power under Section 482 of the Cr.P.C., to quash such criminal proceedings where it finds that the girl was nearing the age of majority; had gone with the boy of her own free will (though it may be immaterial in law); is happily living with the boy, either in matrimony or otherwise, after attaining the age of majority; and in some circumstances where such relationship has also resulted in children being born. The Court, in such circumstances, is persuaded to save the lives of such an accused, rather than to make him undergo trial and eventual punishment, which would not only ruin innocent lives of the parties to such a relationship, but may be, also of the children that are born therefrom. In this regard, apart from the judgments



that have been cited by the learned Amicus, I may also refer to the judgment of the Supreme Court in ***Kapil Gupta v. State of NCT of Delhi and Another***, 2022 SCC OnLine SC 1030, wherein the Supreme Court, while quashing an FIR and consequential proceedings where the accused had been charged with offence under Section 376 of the IPC, observed as under:-

“13. It can thus be seen that this Court has clearly held that though the Court should be slow in quashing the proceedings wherein heinous and serious offences are involved, the High Court is not foreclosed from examining as to whether there exists material for incorporation of such an offence or as to whether there is sufficient evidence which if proved would lead to proving the charge for the offence charged with. The Court has also to take into consideration as to whether the settlement between the parties is going to result into harmony between them which may improve their mutual relationship.

14. The Court has further held that it is also relevant to consider as to what is stage of the proceedings. It has been observed that if an application is made at a belated stage wherein the evidence has been led and the matter is at the stage of arguments or judgment, the Court should be slow to exercise the power to quash the proceedings. However, if such an application is made at an initial stage before commencement of trial, the said factor will weigh with the court in exercising its power.”

27. Reference should also be had to the judgments of this Court in ***Rahul Verma v. State & Anr.***, 2013 SCC OnLine Del 469 and ***Vijay Kumar v. The State Govt. of NCT of Delhi & Anr.*** (judgment dated 22.05.2023 in Crl.M.C. 2153/2021).



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28. As noted hereinabove, though the respondent no.3 was a minor when she eloped with the petitioner, and may be when they solemnized their marriage, she states that she is happily living with the petitioner, and the two children, who have been born from the wedlock. In such a scenario, to continue to prosecute the petitioner would in fact be to punish the respondent no.3, who the law sees as a victim. It would also punish the two children for no fault of theirs. It will ruin four lives and no person shall gain therefrom.

29. Keeping in view the above peculiar circumstances, in my opinion, this is a fit case for exercising the jurisdiction under Section 482 of the Cr.P.C. for quashing the FIR against the petitioner.

Conclusion

30. Accordingly, the petition is allowed. The FIR No.0768/2015 registered at Police Station: Vivek Vihar, East Delhi, for offence under Sections 363/376 of the IPC, Section 6 of the POCSO and Section 3 of the Child Marriage Act is quashed.

31. This Court would like to express its gratitude to the learned *Amicus Curiae* for his assistance.

NAVIN CHAWLA, J

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Click here to check corrigendum, if any