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

+ **W.P.(CRL) 1049/2024 & CRL.M.A. 9918/2024**

MOHAMMAD SULAIMAN

.....Petitioner

Through: Mr. Faisal Zafar, Mr. Sumair Ali,
Advs. for petitioners
P1 and P4 in person

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

Through: Ms. Rupali Bandhopadhyaya, ASC for
the State with Mr. Abhijeet Kumar
and Mr. Anurag Aroar, Advs.
SI Pushpa PS Shaheen Bagh
Mr. Lovish Sharma, Adv. for R-2

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

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28.01.2025

1. This petition is filed seeking quashing of FIR No. 84/2024 dated 10.03.2024 registered under Section 6 of Protection of Children from Sexual Offence Act, 2012 ('POCSO Act') at Police Station (P.S.) Shaheen Bagh, New Delhi.

2. The present FIR was registered on the basis of the information received from the hospital authority of Alshifa Hospital, Abul Fazal Enclave, Delhi on 10.03.2024, whereby it was informed that a minor girl [Respondent no.2/prosecutrix] has been admitted to the hospital with history of 9 Month



pregnancy and was 17 years of age at that time; thereafter, prosecutrix gave birth to a baby boy.

3. Learned counsel for Petitioner states that Section 6 of POSCO Act under which the Petitioner has been charged is inapplicable and liable to be quashed by reasons of the principles under the Mohammedan Law which permits Muslim girl underage of 18, who has attained the age of puberty to get married. He states that this principle has been recognized by decisions of this Court in **Fija v. State (NCT of Delhi)**¹ and **Bholu Khan v. State of NCT of Delhi**².

4. He states that the Respondent No. 2, out of her own volition got married to the Petitioner and established physical relationship without any coercion, pressure, undue influence of any sort by Petitioner. He states that Respondent No. 2 is now presently eighteen (18) years and ten months (10) old. He states that it is confirmed by the affidavit filed by the Respondent no.2/prosecutrix that the marriage was solemnised and prosecutrix never wished to pursue the FIR in question.

5. The Court, firstly, had an extensive interaction in the chamber with the prosecutrix/Respondent no. 2 alone on the last date of hearing i.e. 17.01.2025. During the interaction, she confirmed that she married to the Petitioner on 07.11.2022 and she had made physical relations with her husband out of her own will. She further stated that she wants to live happily with the Petitioner and does not wish to pursue the present FIR. She stated that at the time of her marriage, she had been living with her maternal

¹ 2022 SCC OnLine Del 2527, at para 17

² 2013 SCC OnLine Del 417 at para 12



grandparents as her mother had passed away; and her father had re-married and was living with his new family. She stated that she has been raised by her maternal grandparents and the marriage was solemnized with the consent of the family.

6. Thereafter, this Court also had an interactive session with the couple as well in the chamber and they appeared to have a cordial relationship with each other. The Petitioner No. 1 is educated and stated that he had married Respondent No. 2 as per the mutual decision of the family members.

7. Learned APP for the State, however, objects to quashing of the FIR in question on the basis that the Respondent no.2 was a minor as on 07.11.2022 when the marriage was solemnised and was not legally capable of giving a consent. He states that the offence alleged is very serious in nature and ought not to be quashed merely because the victim wants to settle the dispute.

8. He fairly states that though Respondent No. 2, during investigation, in her statement recorded under Section 164 of the Code of Criminal Procedure, 1973 ('Cr. P.C.') before the Court has stated that the marriage was solemnised with her free will and she is living a happy life with Petitioner No. 1 and her baby boy.

9. He has submitted that a supplementary chargesheet has been filed and the maternal grandparents as well as the maternal uncle of Respondent No. 2 has been charge-sheeted under relevant provisions of the Prohibition of Child Marriage Act, 2006 ('PCM Act').

10. In view of the supplementary chargesheet, the learned counsel for the Petitioner has filed an amended memo of parties arraying the the maternal



grandparents as well as the maternal uncle of Respondent No. 2 as Petitioner Nos. 2, 3 and 4.

11. This Court has heard the parties.

12. The present case presents a peculiar set of circumstances wherein on one hand there are allegation under Sections 6 of the POCSO Act against the Petitioner, however, on the other hand, Respondent No.2 is a wedded wife of the Petitioner and has been cohabiting with Petitioner since 2022 and are now blessed with a baby boy as well.

13. In the peculiar circumstances of this case though this Court, no doubt, is very mindful of the fact that the allegations levelled against the Petitioner No. 1 involve a serious offence having grave punishment in case of conviction, however, what prevails with the Court is the incontrovertible fact that if the Petitioner No. 1 was to be prosecuted further in the matter it is unlikely that the present FIR will result in a conviction since the principal witness against him would be his own wife (with whom he has a minor child and who has already been residing with him for more than 02 years).

14. Further if the present FIR is not quashed, it will adversely affect the minor child who needs protection and care from his parents, and destroy the lives of three individuals i.e. the couple and the new born which would lead to ruination of the entire family.

15. Additionally, it may be noted that Coordinate Benches of this Court by decisions in **Faizan v. State of NCT of Delhi**³; **Mr. Sujit Kumar v. State (Govt of NCT of Delhi)**⁴ and **Vijay Kumar v. The State Govt. of**

³ W.P (CRL) 915/2024 dated 29.07.2024

⁴ CRL.M.C. 7406/2024 dated 19.09.2024



NCT of Delhi & Anr⁵ have quashed FIRs in similar circumstances. A recent judgment of the coordinate bench in **Mukesh Kumar Yadav v. The State of NCT of Delhi**⁶ pronounced on 22.11.2024 is also relevant to the facts of this case, wherein as well the accused and prosecutrix were married and had two children.

16. It would also be relevant to refer to the judgment passed by the Full Bench of this Court in **Court on its own Motion (Lajja Devi) v. State**⁷ wherein in a similar issue with regards to marriage of a girl less than 18 years of age and Court's power to quash the criminal proceedings under Section 363 or 376 IPC was considered. The Full Bench concluded that:

“51. If the girl is more than 16 years, and the girl makes a statement that she went with her consent and the statement and consent is without any force, coercion or undue influence, the statement could be accepted and Court will be within its power to quash the proceedings under Section 363 or 376 IPC. Here again no straight jacket formula can be applied. The Court has to be cautious, for the girl has right to get the marriage nullified under Section 3 of the PCM Act. Attending circumstances including the maturity and understanding of the girl, social background of girl, age of the girl and boy etc. have to be taken into consideration”

In the present case since Respondent no. 2 has since attained majority and has elected to continue with her marriage to Petitioner no. 1 and accepted the same. During her personal interaction with this Court Respondent no. 2 expressed her satisfaction of being loved and cared in her matrimonial home especially considering the fact that she lost her mother

⁵ CrI.M.C. 2153/2021 dated 22.05.2023

⁶ CrI.M.C. 9140/2024

⁷ 2012 SCC OnLine Del 3937



when she was very young and was living separately from her father who has since re-married.

17. In view of the fact that Respondent No.2 and the Petitioner are leading a happy matrimonial life, Petitioner being major in age now, therefore, this Court feels that no useful purpose would be served by keeping the dispute alive and the continuance of the proceedings would be nothing but abuse of the process of law, therefore, in the larger interests of justice, and so as to not destroy a young family, this court is persuaded to accept the present petition. As noted above Respondent no. 2 has no objection if the present FIR is quashed.

18. Vis-à-vis for Petitioner Nos. 2, 3 and 4, who have been charge-sheeted in the supplementary charge-sheet under the PCM Act, this Court would like to refer to the judgment passed by the Division Bench of this Court in **Tahira Begum v. State of Delhi & Ors.**⁸ wherein while adjudicating in a writ petition seeking habeas corpus, the Division Bench held at paragraph 5 that a Muslim girl who has attained puberty i.e., 15 years can marry and such a marriage would not be a void marriage. However, she has the option of treating the marriage as voidable, at the time of her attaining the age of majority, i.e. 18 years. In the facts of the present case, Respondent no. 2 has attained majority and has affirmed and elected to accept her marriage and continue with the same. Respondent No. 2 was admittedly 16 years and 8 months old approximately when the marriage was solemnised. Respondent no. 2 was raised by her maternal grandparents and maternal uncle after her mother's death. Respondent no. 2 does not hold any grouse against her

⁸ W.P. (Crl.) 446/2012 decided on 09.05.2012



maternal grandparents who are above the age of 70 years and her uncle for the marriage. In these peculiar facts, this Court is satisfied that the charge-sheet filed against the said Petitioner Nos. 2, 3 and 4 also ought to be quashed.

19. Needless to state that these are exceptional circumstances which invite the Court to exercise its inherent powers under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 to modulate the relief and take a view on humanitarian grounds.

20. Accordingly, the petition is allowed. Consequently, the FIR No. 84/2024 at Police Station (P.S) Shaheen Bagh, New Delhi and proceedings emanating therefrom are quashed against Petitioner nos. 1, 2, 3 and 4. Pending applications (if any) are disposed of as infructuous.

21. Copy of order be communicated to the Jail Superintendent for compliance.

22. The learned counsel for the Petitioners is directed to place on record the affidavits of Petitioner nos. 2, 3 and 4 within a period of two (2) weeks in support of the petition.

23. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J

JANUARY 28, 2025/hp/ms