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

+ **CRL.M.C. 7000/2024**

SURAJ AND ORS

.....Petitioners

Through: Mr. Purushottam Kumar and Mr.
Hitesh Pandey, Advs. along with
petitioners.

versus

STATE NCT OF DELHI AND ORS

.....Respondents

Through: Mr. Pradeep Gahlot, APP with S.I.
Rajnandini, P.S. Hauz Qazi, Delhi.
R-2 & 3 in person.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

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17.01.2025

1. The present petition has been filed under Section 482 CrPC seeking quashing of FIR No.233/2022 under Sections 363/376 IPC, Sections 6/21 POCSO and Sections 9/10 of Prohibition of Child Marriage Act, 2006 registered at Police Station Hauz Qazi, Delhi and all consequential proceedings emanating therefrom on the ground of settlement to the effect that the petitioner no.1 and the respondent no.3 have married and they are also blessed with a child.

2. The petitioner nos.2 to 4, as well as, respondent nos.2 and 3 are present in the Court and they have been identified by the Investigating Officer i.e. S.I. Rajnandini, P.S. Hauz Qazi, Delhi. The petitioner no.1 is in judicial custody.

3. The present FIR came to be registered at the instance of the respondent no.2, who is father of the respondent no.3, alleging that the victim/respondent no.3 left for her school and did not come back on the date



of incident. This led to registration of the aforesaid FIR.

4. During the course of investigation, the respondent no.3 was traced from the residence of the petitioner no.1 and it was found that she had married to petitioner no.1 and there is also a child born out of the said relationship. It is the case of the prosecution that the respondent no.3/victim is aged about 17 years whereas the petitioner no.1 is aged about 21 years.

5. The learned counsel appearing on behalf of the petitioners submits that quashing of the present FIR is being sought on the peculiar facts and circumstances of the present case where the petitioner no.1, as well as, the respondent no.3 have married and they have also been blessed with a child.

6. He further submits that in case FIR is not quashed and the petitioner no.1 is allowed to languish in jail, the life of the respondent no.3, as well as, their child will be adversely affected. In support of his contention, the learned counsel has placed reliance on the decision dated 19.09.2024 passed by the Coordinate Bench of this court in CrI.M.C. 7406/2024 titled ***Sujit Kumar v. State (Govt. of NCT of Delhi) & Anr.*** wherein relying upon a decision of Rajasthan High Court in ***Tarun Vaishnav v. State of Rajasthan through PP & Anr., 2022 SCC OnLine Raj 2237***, this court had quashed FIR under Sections 363/366/376/506 IPC and Section 6 POCSO Act regard being had to the peculiar circumstances of the case as the petitioner therein was 19 years of age while the victim/respondent no.2 was 17 years of age and they had also married of their own free will and were blessed with a child. The relevant part of the said decision reads as under:

*“8. Additionally, it may be noted that various High Courts have quashed FIRs in similar such circumstances, one such decision being ***Tarun Vaishnav v. State of Rajasthan through PP & Anr., 2022 SCC OnLine Raj 2237*** by the Jodhpur Bench of the*



Rajasthan High Court. Said decision has attained finality as a Special Leave Petition against the same was dismissed by the Apex Court on 03rd March 2023 vide SLP (Crl.) No. 1890/2023. Decision of the Rajasthan High Court was rendered in a case where prosecutrix delivered a baby in the hospital and the FIR was lodged pursuant to statement of the minor girl. Statement recorded by IO revealed a romantic relationship between the 16 year old prosecutrix and 22 year old accused. Court, in that case, took into consideration the facts and circumstances of that case and noted that there was a love affair involving a physical relationship out of immaturity, and quashed the FIR against the accused/petitioner therein. Relevant portions of this decision are extracted as under:

“13. This Court is not oblivious of the legal position that in cases concerning sexual act with a minor, consent, if any, has no legal sanctity and it cannot be used as a defence. Needless to mention that this Court cannot and does not accord any approval or sanction to the sexual act of petitioner with the prosecutrix but then, it is a hard reality that their love affair has traversed beyond the legal and moral bounds, consequence whereof has begotten a child.

14. This Court cannot be a silent spectator to or turn its back on the distressed family. If the impugned FIR is not quashed, the petitioner will have to face incarceration for at least 10 years. The mistake or blunder which otherwise constitutes an offence has been committed due to immature act and uncontrolled emotions of two persons, out of whom, one is still a minor.

15. The petitioner's prosecution and conviction will lead to pain and tears in the eyes of the family members of both the parties and future of two families, and above all, an innocent child will be at stake, whereas, if the impugned FIR is quashed, it would serve the ends of justice.

16. It is to be noted that in almost similar circumstances, different High Courts have quashed the FIR/proceedings. The following are to mention a few:-

(i) Vijayalakshmi v. State (Crl.M.P. No. 109/2021), decided on 27.01.2021 by Hon'ble High Court of Madras;



(ii) *Kundan v. State* (Crl.M.C. No. 27/2022), decided on 21.02.2022 by Hon'ble High Court of Delhi;

(iii) *Shri Skhemborland Suting v. State of Meghalaya* (Crl. Petition No. 63/2021), decided on 23.03.2022 by Hon'ble High Court of Meghalaya.

17. *Different High Courts have given different reasonings dealing with medical, psychological, social angles of the situation; analysing the statement of objects and reasons of the POCSO Act; considering practical realities including future of the newborn child involved.*

(emphasis added)

9. *In the present case as well, parents of the prosecutrix have expressed concern for the prosecutrix, as also her baby, and are mindful of the lack of maturity and mistake of the daughter which ultimately led to the delivery of the baby."*

7. In the said decision, the judgment of the Rajasthan High Court in ***Tarun Vaishnav*** (*supra*) which was relied upon was also on similar facts wherein the FIR was under Section 376 IPC read with Sections 3 and 4 of POCSO Act and the complainant was a minor and she had married the accused and were blessed with a child and in this factual backdrop the FIR was quashed. It is also recorded in the decision that SLP filed against the decision in ***Tarun Vaishnav*** (*supra*) also came to be dismissed by the Hon'ble Supreme Court.

8. The decisions in ***Sujit Kumar*** (*supra*) and ***Tarun Vaishnav*** (*supra*) squarely apply to the facts of the present case. It is also a case of romantic relationship where the petitioner no.1 and respondent no.3 married despite the fact that the respondent no.3 had not attained legal age of marriage.

9. Insofar as the allegations under the Prohibition of Child Marriage Act, 2006 is concerned, undoubtedly no judicial imprimatur can be given to the



validity of such marriage. However, having regard to the peculiar features of the present case where the petitioner no.1 and the respondent no.3 have a minor child aged about one year out of their consensual relationship, this Court is of the view that not only the life of the victim but the minor child will also be ruined in case the present criminal proceedings are allowed to continue and the petitioner no.1 is kept incarcerated.

10. The respondent no.2, who is present court, on a query posed by the Court states that the criminal case may be closed. Similar prayer is made by the respondent no.3, who is present in court with a minor child.

11. Having regard to the aforesaid peculiar circumstances, this court is of the opinion that the present petition deserves to be allowed to serve the ends of justice.

12. Consequently, FIR No.233/2022 under Sections 363/376 IPC, Sections 6/21 POCSO and Sections 9/10 of Prohibition of Child Marriage Act, 2006 registered at Police Station Hauz Qazi, Delhi and all consequential proceedings emanating therefrom is quashed.

13. At this stage, the learned counsel appearing on behalf of the petitioners submits that the petitioner no.1 is in Judicial Custody. Since this court has quashed the FIR, the Jail Superintendent is directed to release the petitioner no.1 forthwith in case he is not required in any other case.

14. With the aforesaid directions, the petition stands disposed of.

15. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J

JANUARY 17, 2025/aj