

Neutral Citation No. - 2024:AHC:135820-DB

Court No. - 42

Case :- CRIMINAL MISC. WRIT PETITION No. - 12522 of 2024

Petitioner :- Smt Ujala And Another

Respondent :- State Of Up And 3 Others

Counsel for Petitioner :- Arvind Kumar, Vidya Sagar Rajbhar

Counsel for Respondent :- G.A.

Hon'ble Vivek Kumar Birla, J.

Hon'ble Arun Kumar Singh Deshwal, J.

1. Supplementary affidavit as well as compliance affidavit filed today are taken on record.
2. Heard Sri Vidya Sagar Rajbhar, learned counsel for the petitioners and Sri Ghanshyam Kumar, learned AGA-I for the State respondents and perused the record.
3. The present writ petition has been preferred with the prayer to quash the impugned First Information Report dated 27.6.2024, registered as Case Crime No. 0211 of 2022, under Sections 363, 366 IPC, P.S. Bardah, District Azamgarh and for a direction to the respondents not to arrest the petitioners in pursuance of impugned First Information Report.
4. Pursuant to the orders of this Court dated 24.7.2024 and 08.8.2024, learned A.G.A. has filed compliance affidavit annexing therewith copy of the statement of the victim/petitioner no.1 herein recorded u/s 164 Cr.P.C. and the case diary showing the ossification test report.
5. According to the statement of victim/petitioner no.1 herein recorded u/s 164 Cr.P.C. the victim has not supported the prosecution version and has categorically stated that she left her home willingly with Arvind, petitioner no.2 herein and they have married each other as well and there was consented physical relationship. As per the ossification test report, the victim is aged above 18 years and below 22 years.
6. Reliance has been placed by learned counsel for the petitioners on a judgement and order dated 5.12.2022 passed by this Court in Criminal Misc. Writ Petition No. 17046 of 2022 (**Smt. Juli**

Kumari and another vs. State of UP and 2 others) to submit that under identical circumstances the petition was allowed and FIR therein was quashed.

7. The aforesaid order dated 5.12.2022 passed in Criminal Misc. Writ Petition No. 17046 of 2022 (**Smt. Juli Kumari and another vs. State of UP and 2 others**) is quoted as under:

"Heard learned counsel for the petitioners and learned AGA.

Present writ petition has been preferred for quashing the FIR dated 25.10.2022 being Case Crime No.0475 of 2022 under Section 366 IPC, P.S. Saurikh, Distt. Kannauj and for a direction to respondents not to arrest the petitioners pursuant to aforesaid FIR.

Placing reliance on the Aadhar Card of the victim girl showing her date of birth as 1.1.2004, it is submitted by the learned counsel for the petitioners that the petitioner no.1 is a major girl aged about more than 18 years on the date of incident.

The present petition has been filed with the declaration, jointly by both the petitioners no.1 & 2 that the petitioner no.1 had left her paternal home out of her own sweet will and being a major girl, she is free to take her choice to perform marriage with the petitioner no.2.

The present petition, however, has been filed on the assertion that no offence under Section 366 IPC is made out as the petitioner no.1 is a major girl. The entire criminal case lodged by the respondent no.3 is nothing but an abuse of the process of the law.

*Learned counsel for the petitioners has further contended that in view of the aforesaid facts and circumstances, the impugned FIR is liable to be quashed in view of the Supreme Court's judgment in **Kavita Chandrakant Lakhani vs. State of Maharashtra & Anr** reported in **AIR 2018 SC 2099**, wherein it was held that to constitute an offence under Section 366 IPC, it is necessary for the prosecution to prove that the accused induced the complainant woman or compelled by force to go from any place, that such inducement was by deceitful means, that such abduction took place with the intent that the complainant may be seduced to illicit intercourse and/or that the accused knew it to be likely that the complainant may be seduced to illicit intercourse as a result of her abduction. Mere abduction does not bring an accused under the ambit of this penal section. So far as charge under Section 366 IPC is concerned, mere finding that a woman was abducted is not enough, it must further be proved that the accused abducted the woman with the intent that she may be compelled, or knowing it to be likely that she will be compelled to marry any person or in order that she may be forced or seduced to illicit intercourse or knowing it to be likely that she will be forced or seduced to illicit intercourse. Unless the prosecution proves that the abduction is for the purposes mentioned in Section 366 IPC, the Court cannot hold the accused guilty and punish him under Section 366 IPC.*

As regards the age of the victim girl, as indicated in the Aadhar Card

appended as Annexure No.2 to the writ petition, no dispute has been raised by learned AGA. It is, thus, clear that both the petitioners are major. The fact that the present writ petition has been filed with the declaration by the victim girl and that she is living voluntarily in the company of the petitioner no.2, is supported with the signature of the victim girl on the Vakalatnama. Once the age of the victim girl is not in dispute, the petitioners no.1 & 2 cannot be made accused for committing offence under Section 366 IPC as victim had left her home in order to live with the petitioner no.2.

We make it clear that the question in the present petition is not about the validity of marriage of two individuals i.e. petitioners no.1 & 2. Rather, the issue is about the life and liberty of two individuals in choosing a partner or their right to freedom of choice as to with whom they would like to live.

In view of the above discussion, we are of the considered view that from the first information report no offence under Section 366 IPC is made out, inasmuch as, both the petitioners are major and the petitioner no.1 has come up with the categorical stand that she had left her home with the petitioner no.2 willingly and is living with him as a married woman.

In view of the above, the writ petition succeeds and is allowed. The FIR dated 25.10.2022 being Case Crime No.0475 of 2022 under Section 366 IPC, P.S. Saurikh, Distt. Kannauj as well as all consequential proceedings are hereby quashed.

We, however, clarify that while deciding the present petition, we have not looked into the validity of marriage of the petitioners."

8. In view of the above discussion, we are of the considered view that from the first information report, no offence under Section 366 IPC is made out, in as much as, both the petitioners are major and petitioner no.1 had left her home with petitioner no.2 willingly and is living with him as a married woman.

9. In view of the above, the writ petition succeeds and is **allowed**. The First Information Report dated 27.6.2024, registered as Case Crime No. 0211 of 2022, under Sections 363, 366 IPC, P.S. Bardah, District Azamgarh as well as all consequential proceedings are hereby quashed.

10. We, however, clarify that while deciding the present petition, we have not looked into the validity of marriage of the petitioners.

11. Since this order has been passed in absence of respondent no. 4, she shall be at liberty to file a recall application for recalling of this order within six weeks, in case any false case has been represented before this Court.

12. This Court finds that in the supplementary affidavit filed today, learned counsel for the petitioners has annexed the copy of the

statement recorded u/s 164 Cr.P.C. as well as the copy of the ossification test report.

13. This Court has noticed that in a number of cases, the statements recorded u/s 164 Cr.P.C. are being filed by the accused/petitioners before this Court while challenging FIR under Article 226 of the Constitution of India. This practice has been strictly deprecated by the Hon'ble Apex Court in the case of '**State of Karnataka vs. Shivam (2014) 8 SCC 913**' as well as in '**A. vs. State of U.P. and another (2020) 10 SCC 505**'. Hon'ble Apex Court in the above mentioned cases clearly observed that accused or any other person has no right to receive copy of statements recorded u/s 164 Cr.P.C. until cognizance is taken by the concerned court / Magistrate on chargesheet / police report filed u/s. 173 Cr.P.C. It was also observed by the Apex Court that immediately after recording statement u/s 164 Cr.P.C., copy of the same be given to Investigating Officer with specific direction that contents of such statement should not be disclosed to any person till chargesheet / police report u/s 173 Cr.P.C. is filed. Para 16 and 17 of '**A. vs. State of U.P.**' (supra) is quoted as under :

"16. It was, thus, directed by this Court that a copy of the statement of the victim recorded under Section 164 CrPC be handed over by the Judicial Magistrate concerned to the investigating officer with a specific direction that the contents of such statement under Section 164 CrPC should not be disclosed to any person till charge-sheet/report under Section 173 CrPC was filed.

*17. The scheme of the relevant provisions of CrPC shows that after the conclusion of the investigation, an appropriate report under Section 173 CrPC is to be filed by the police giving information as required by Section 173. In terms of Section 190 CrPC, the Magistrate concerned may take cognizance of any offence inter alia upon a police report. At the stage of exercise of power under Section 190 CrPC, as laid down by this Court in a number of decisions, the notable being the decision in *Bhagwant Singh v. State*, the Magistrate may deem fit that the matter requires further investigation on certain aspects/issues and may pass appropriate direction. It is only after taking of the cognizance and issuance of process that the accused is entitled, in terms of Sections 207 and 208 CrPC, to copies of the documents referred to in the said provisions."*

14. Therefore, this Court also strictly deprecates this practice of annexing the statement of the victim recorded u/s 164 Cr.P.C. by the accused-petitioners and further is of the view that concerned Magistrates / courts should not issue certified copies of the statement recorded u/s 164 Cr.P.C. as deprecated by the Hon'ble Apex Court to any person till cognizance is taken on the charge-sheet / police report. This Court also observes that even lower

courts are issuing certified copies of the statements recorded u/s 164 Cr.P.C. (now section 183 BNSS) which is legally not permissible.

15. We, therefore, direct the Registrar General of this Court to bring this order in the knowledge of Hon'ble the Chief Justice so that if it is found appropriate, a circular may be issued to the District Courts of the State of U.P.

16. It is further directed that the Investigating Officers shall not supply copy of the statements recorded u/s 164 Cr.P.C. (now section 183 BNSS) to any person during investigation.

17. Copy of this order be sent to Director General of Police, U.P. by the Govt. Advocate who shall in turn circulate the same to all the police stations of the district for its compliance.

Order Date :- 23.8.2024
Madhurima