

Smt Jyoti And Another vs State Of Up And 3 Others on 1 May, 2025

Author: Mahesh Chandra Tripathi

Bench: Mahesh Chandra Tripathi

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:68370-DB

Court No. - 42

Case :- CRIMINAL MISC. WRIT PETITION No. - 8000 of 2025

Petitioner :- Smt Jyoti And Another

Respondent :- State Of Up And 3 Others

Counsel for Petitioner :- Abhijit Mishra,Raj Kumari Tiwari

Counsel for Respondent :- G.A.

Hon'ble Mahesh Chandra Tripathi,J.

Hon'ble Anil Kumar-X,J.

1. Heard learned counsel for the petitioners and learned A.G.A. for the State-respondents.

2. The present writ petition has been preferred with the prayer to quash the impugned First Information Report dated 29-03-2025 registered as Case Crime No. 167/2025 under Section 87 of the Bhartiya Nyaya Sanhita 2023, registered at Police Station Bhogaon, District Mainpuri and with a further prayer not to arrest the petitioners in pursuance of the impugned F.I.R.

3. Supplementary affidavit filed today is taken on record.

4. The impugned FIR was lodged by the informant alleging that on 29-03-2025 at approximately 7:00 AM, the petitioner No.2 enticed and took away the informant's daughter aged about 20 years.

5. The learned counsel for the petitioners submits that the present writ petition seeks quashing of the impugned FIR as no prima facie case is made out against the petitioners under Section 87 of the Bhartiya Nyaya Sanhita 2023. The learned counsel contends that both petitioners are majors - petitioner no. 1 being more than 19 years of age with date of birth as 01-07-2005 according to her Aadhar card and 05-07-2006 as per her High School mark sheet, while petitioner no. 2 is approximately 23 years old with date of birth as 20-08-2002. The learned counsel further submits that the petitioners, who belong to the same caste and religion, have been in a relationship for one and a half years and have solemnized their marriage according to Hindu rites at Arya Samaj Mandir, Kurawall Road, Mainpuri on 20-03-2025. Marriage registration has also been applied for on the government portal. The learned counsel emphasizes that petitioner no. 1 was not inclined to marry the person chosen by her parents and has willingly married petitioner no. 2 without any undue influence or compulsion. The learned counsel contends that as both petitioners are majors with the constitutional right to choose their spouse, and as petitioner no. 1 has willingly married petitioner no. 2, the essential ingredient of Section 87 of the Bhartiya Nyaya Sanhita 2023, which requires kidnapping or abduction for the purpose of compelling marriage against will, is absent in the present case. 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. Learned counsel for the petitioners, in support of his submissions, has placed reliance on the judgment in Kavita Chandrakant Lakhani vs. State of Maharashtra & Anr reported in AIR 2018 SC 2099 as well as the judgement and order dated 5.12.2022 passed by a Coordinate Bench of this Court in Criminal Misc. Writ Petition No. 17046 of 2022 (Smt. Juli Kumari and another vs. State of UP and 2 others).

6. Learned A.G.A., on the instructions, states that till date the police report has not been submitted in the present matter. He has submitted that once the petitioner No.2, who is major, has herself admitted that she has already solemnized marriage with the petitioner, he has no objection, if the matter is decided on merit.

7. Heard rival submissions, perused the record and respectfully considered the judgments cited at Bar.

8. Hon'ble Supreme Court's in Kavita Chandrakant Lakhani vs. State of Maharashtra & Anr (Supra) has 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.

9. In Smt. Juli Kumari and another vs. State of UP and 2 others (Supra), the Coordinate Bench, in identical circumstances, has allowed the petition and quashed the FIR. For ready reference, the said judgment 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."

10. Considering the facts and circumstances, we find that once the age of the petitioner No.1 is not in dispute and she herself states that she has married with the petitioner No.2 out of her own free will, then the petitioner No.2 cannot be made accused for committing offence under the aforesaid Sections as petitioner No.1 had left her home in order to live with the petitioner No.2.

11. In view of the above discussion, we are of the considered view that from the first information report no offence under the aforesaid Section is made out, inasmuch as 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.

12. In view of the above, the writ petition succeeds and is allowed. Consequently, the First Information Report dated 29-03-2025 registered as Case Crime No. 167/2025 under Section 87 of the Bhartiya Nyaya Sanhita 2023, registered at Police Station Bhogaon, District Mainpuri as well as all consequential proceedings are hereby quashed.

13. We further clarify that the observations made qua the marriage is only for disposal of instant matter and would have no bearing qua their respective rights and the same is to be pressed before the competent court/ authority.

Order Date :- 1.5.2025 NLY (Anil Kumar-X,J.) (Mahesh Chandra Tripathi,J.)