

Smt Simpāl Devi And Another vs State Of Up And 3 Others on 2 January, 2025

Author: Mahesh Chandra Tripathi

Bench: Mahesh Chandra Tripathi

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:261-DB

Court No. - 42

Case :- CRIMINAL MISC. WRIT PETITION No. - 22406 of 2024

Petitioner :- Smt Simpāl Devi And Another

Respondent :- State Of Up And 3 Others

Counsel for Petitioner :- Sunit Kumar,Yatish Kumar Dwivedi

Counsel for Respondent :- G.A.

Hon'ble Mahesh Chandra Tripathi,J.

Hon'ble Ms. Nand Prabha Shukla,J.

1. Heard learned counsel for the petitioners and learned A.G.A. for the respondents and perused the record.

2. The present writ petition has been preferred with prayer to quash the impugned First Information Report dated 30.09.2024 registered as Case Crime No.270 of 2024, under Section 87 of B.N.S., Police Station Mariyahun, District Jaunpur and for a direction to the respondents not to arrest the petitioners in pursuance of impugned First Information Report.

3. Learned counsel for the petitioners submits that as per High School certificate the date of birth of the first petitioner is 30.08.2006 and as such, she is major. The second petitioner is also major. Both the petitioners have performed their marriage on 03.10.2024 as per Hindu rites and customs. After the marriage, the first petitioner is peacefully living with the second petitioner as husband and wife at her matrimonial home. It is submitted that no offence under Section 87 BNS is made out against the second petitioner as the victim is a major girl. The entire criminal case lodged against the second petitioner is nothing but an abuse of the process of the law.

4. Learned counsel for the petitioner 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/Section 87 BNS, 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 87 BNS 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 87 BNS, the Court cannot hold the accused guilty and punish him under Section 87 BNS.

5. Reliance has also been placed on a 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), wherein under identical circumstances, the petition was allowed and FIR therein was quashed. For ready reference the order dated 5.12.2022 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."

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 victim, who is major, has herself admitted that she has already solemnized marriage with the second petitioner, he has no objection, if the matter is decided on merit.

7. We have proceeded to examine the record in question and find that once the age of the victim girl is not in dispute and she herself states that she has married with the second petitioner out of her own free will, then the second petitioner cannot be made accused for committing offence under Section 87 BNS as victim had left her home in order to live with the second petitioner.

8. In view of the above discussion, we are of the considered view that from the first information report no offence under Section 87 BNS is made out, inasmuch as the victim has come up with the categorical stand that she had left her home with the petitioner willingly and is living with him as a married woman.

9. In view of the above, the writ petition succeeds and is allowed. Consequently, the First Information Report dated 30.09.2024 registered as Case Crime No.270 of 2024, under Section 87 of B.N.S., Police Station Mariyahun, District Jaunpur as well as all consequential proceedings are hereby quashed.

10. 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 :- 2.1.2025 RKP