

VISHWAS BHANDARI

A

v.

STATE OF PUNJAB & ANR.

(Criminal Appeal No. 105 of 2021)

FEBRUARY 03, 2021

B

[HEMANT GUPTA AND S. RAVINDRA BHAT, JJ.]

Code of Criminal Procedure, 1973: s.482 – Complaint filed under ss.363 and 366-A IPC against one ‘V’ and the appellant that the two accused had kidnapped her daughter by alluring her for the purpose of marriage – In the proceedings before the court, the complainant appeared and recorded statement restricting her allegations in respect of ‘V’ only while prosecutrix deposed that accused ‘V’ had married her and she has two children with him – Trial court acquitted ‘V’ – Appellant invoked the jurisdiction of High Court for quashing of the FIR and subsequent proceedings, inter alia, on the ground that neither the prosecutrix nor the complainant levelled an iota of allegation against him in respect of abduction of the prosecutrix – High Court dismissed the petition – On appeal, held: The evidence of the prosecutrix and the complainant before the Court showed that there was no allegation whatsoever against the appellant – Main allegation was against ‘V’ but the prosecutrix married him and gave birth to two children out of that wedlock – Thus, in the absence of any allegation and evidence against the appellant, the continuation of proceedings against him was nothing but an abuse of process of law – Proceedings against him are quashed.

C

D

E

F

Allowing the appeal, the Court

HELD: 1. The main allegation was against ‘V’ but the prosecutrix married him on 4.8.2013 and had given birth to two children out of that wedlock. In the absence of any allegation against the appellant, the continuation of proceedings against him is nothing but an abuse of process of law. Since there is no evidence against the appellant, the proceedings initiated against him on the basis of FIR would be untenable. The High Court was, thus, not justified in dismissing the petition against the appellant. [Paras 9, 10][62-C-D]

G

H

- A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 105 of 2021

From the Judgment and Order dated 16.10.2020 of the High Court of Punjab and Haryana at Chandigarh in CRM-M 24722 of 2020 [O&M]

- B Viraj Kadam, Ms. Soumya Dutta, Mrs. Priyata Chakraborty, Ajaivir Singh, Aabhas Kshetarpal, Siddhartha Jha, Gazab Singh Chauhan, Ms. Jaspreet Gogia, Advs. for the appearing parties.

The following Judgment of the Court was delivered :

JUDGMENT

- C Leave granted.

1. The challenge in the present appeal is to an order dated 16.10.2020 passed by the learned Single Bench of the High Court of Punjab and Haryana whereby the petition filed by the appellant under Section 482 of the Code of Criminal Procedure, 1973¹ was dismissed.

- D 2. An FIR No. 31 dated 27.1.2013 was lodged by Rashmi Adhen, wife of Mohanjit Singh for the offences under Sections 363 and 366-A of the Indian Penal Code, 1860². The allegations were that her eldest daughter, 17½ years of age, went out of her house on 23.1.2013 at about 12 noon in the absence of the complainant and her husband. It was averred that Vikram Roop Rai and the present appellant had kidnapped her daughter by alluring her for the purpose of marriage.

3. Upon completion of the investigation, a report under Section 173 Code was filed against Vikram Roop Rai. Furthermore, proceedings for declaring the appellant as proclaimed offender were also initiated.

- F 4. In the proceedings before the Court, the complainant appeared and recorded her statement while restricting her allegations in respect of Vikram Roop Rai only. In the cross-examination, she inter-alia stated to the following effect:

- G “My daughter has solemnised marriage with accused Vikram on 4 August 2013 both the families had solemnised the said marriage at Gurudwara Sahib of Khera Road, Phagwara. I have attended the said marriage, we prepared CD and also clicked photos of the

¹ For short, the ‘Code’

H ² For short, the ‘IPC’

said marriage. Thereafter, Lunch was served at Poonam Hotel, Phagwara. After marriage, my daughter and accused Vikram stayed with us.”

5. The prosecutrix appeared as PW-2. She deposed that accused Vikram Roop Rai had taken her on the promise that he would marry her. He took her to his parents' house and kept her in his house until she was 18 years of age and only then contacted her parents. It was on 24.7.2013 that the accused Vikram Roop Rai called her parents and it was decided that both of them would get married. Subsequently, she married the accused on 4.8.2013.

6. The learned Additional Sessions Judge vide order dated 13.8.2013 held that neither the complainant nor the prosecutrix have disclosed the exact date of birth. Further, no birth certificate was produced to show that the age of the prosecutrix was less than 18 years on the alleged date of occurrence of abduction. The learned trial court recorded the following finding:

“21. Although the prosecutrix PW2 in her examination in chief has stated that the accused had abducted her on the pretext that he will solemnized marriage but how and where abducted her has not been explained by her. Admittedly it is stated by her that was known to her. There is nothing in the statement of this witness that she tried to escape from the clutches of the accused or that she was forced to marry him. Even if it is presumed that the prosecutrix was minor but if she leaves her parents home in every case it cannot be held that it is the accused who has possibly abducted the prosecutrix. Prosecutrix was known to the accused, went with him, married him with consent of both families, had two children with him, then, it cannot be said that she was taken out forcibly from the custody of her lawful guardian, as it is not proved that she is minor as non production of birth certificate issued by Registrar of Births and Deaths, Jalandhar, gives rise to the presumption that, the same could have shown her to be major and hence doubt creeps into the version of the prosecution, the benefit of which is to be given to the accused.”

With these findings, the accused Vikram Roop Rai was acquitted.

7. It is thereafter, the appellant invoked the jurisdiction of the High Court for quashing of the FIR and subsequent proceedings, *inter alia*,

- A on the ground that neither the prosecutrix nor the complainant have levelled an iota of allegation against the appellant in respect of abduction of the prosecutrix. In fact, the prosecutrix married Vikram Roop Rai, the main accused and had two children with him. Such marriage was with the consent of their families. Since there is no shred of evidence against the appellant, therefore, continuation of proceedings against the appellant would amount to abuse of process of law.
- B

8. We have heard learned counsel for the parties.

- 9. We find that the evidence of the prosecutrix and the complainant before the Court shows that there is no allegation whatsoever against
- C the appellant. The main allegation was against Vikram Roop Rai but the prosecutrix married him on 4.8.2013 and had given birth to two children out of that wedlock. In the absence of any allegation against the appellant, we find that the continuation of proceedings against him is nothing but an abuse of process of law.
- D 10. Since there is no evidence against the appellant, the proceedings initiated against him on the basis of FIR would be untenable. The High Court was, thus, not justified in dismissing the petition against the appellant.

11. Hence, the present appeal is allowed. The order passed by the High Court is set aside and the entire proceedings consequent to FIR No. 31 of 2013 and charge sheet stand quashed.

Devika Gujral

Appeal allowed