

Kundan & Anr vs State & Ors on 21 February, 2022

Author: Subramonium Prasad

Bench: Subramonium Prasad

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IN THE HIGH COURT OF DELHI AT NEW DELHI
CRL.M.C. 27/2022
KUNDAN & ANR

Through

Mr. Vipul Lamba, Advo

versus

STATE & ORS

Through

Ms. Meenakshi Dahiya,
State with W/SI Vinod
Delhi Cantt

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
ORDER

% 21.02.2022 HEARD THROUGH VIDEO CONFERENCING

1. This petition under Section 482 Cr.P.C is for quashing FIR No.275/2019 dated 30.10.2019 registered at Police Station Delhi Cantt for offences under Section 363/366/376 IPC and Section 6 of the POCSO Act.

2. Facts, in brief, leading to the instant petition are as under:

a) A missing complainant was given by one Sukhlal R/o Jhuggi No.A-8, Kibri Palace, Delhi Cantt, stating that his daughter (victim/Petitioner No.2 herein) who is 16 years of age is missing from home. It is stated that the complainant tried to find her but was unable to find her. It is stated that one Kundan S/o Ghanshyam (Petitioner No.1 herein), aged 21 years, who used to reside nearby his house, has kidnapped his daughter. On this complaint FIR No.275/2019 dated 30.10.2019 was registered at Police Station Delhi Cantt for offences under Section 363 IPC.

b) During the course of investigation the date of birth of the Victim/Petitioner No. 02 was found to be 28.12.2003. The victim was 16 years of age at the time of incident. Petitioner No.1 was found to be 18 years of age at the time of incident.

c) On 10.08.2020 the mother of the Petitioner No.1 handed over the victim/prosecutrix (Petitioner No.2 herein) to police.

Petitioner No.2 gave a statement to the Police stating that she got married to petitioner No.1 on 29.10.2019 in a Temple at Mahua, U.P. However, she does not have any documents to prove their marriage. It was further stated by the Petitioner No.2 that she is seven months pregnant. Counselling of the victim was done and her Medical examination was conducted on 10.08.2020 vide MLC No. 199/20 at Deen Dayal Upadhyay hospital and the victim was sent to Nirmal Chaya shelter home.

d) On the basis of the statement of the victim and her age proof, offences under Sections 366 & 376 IPC and Section 6 of the POCSO Act were added. Victim's statement under Section 164 Cr.P.C. was recorded wherein she stated that she was frustrated with the taunts of her parents and therefore she went to the accused and they got married.

e) Petitioner No.1 was arrested on 12.08.2020. He was granted regular bail vide order 26.08.2020 by the learned ASJ, FTC- POCSO Act, Patiala House Court, New Delhi.

f) On 02.09.2020 Petitioner No.1 and Petitioner No.2 performed formal wedding reception in presence of family and friends.

g) Charge-sheet has been filed on 11.02.2022.

h) Petitioner No.2 delivered a baby boy on 20.10.2020.

i) Petitioner No.1 has now approached this Court by filing the instant petition for quashing the abovementioned FIR on the ground that the complainant/Respondent No.2 i.e. the father of the victim/petitioner No.2 has accepted the marriage of Petitioner No.1 & 2.

3. The short question which arises, therefore, is whether this Court should exercise its jurisdiction under Section 482 Cr.P.C for quashing the FIR or not.

4. Petitioner No.1 has married Petitioner No.2/Victim. There is a child out of the wedlock. Petitioner No.1 is 21 years of age having his full life ahead of him. Petitioner No.2/Victim is only 18 years of age and is completely dependent on the Petitioner No.1. Parents of both the sides have accepted the marriage. This is not a case where the Petitioner No.1 has established physical relationship forcefully and against the will of Petitioner No.2 and fearing punishment has agreed to marry her after the filing of the FIR. In fact Petitioner No.2 in her statement under Section 164 Cr.P.C has categorically stated that she is in love with Petitioner No.2 and since her parents objected to the marriage she decided to go to the Petitioner No.1 and on her asking they got married on the very next day.

5. It is well settled that Section 482 Cr.P.C gives inherent powers to the High Court and the purpose of Section 482 Cr.P.C is to prevent the abuse of the process of law and more particularly, to secure the ends of justice. The opening words of Section 482 Cr.P.C "nothing in this Code" shows that Section 482 Cr.P.C is an over-riding provision. These words indicate that none of the provisions of the Code limits or restricts the inherent powers of Section 482 Cr.P.C.

6. The purpose of Section 482 Cr.P.C is primarily to secure the ends of justice. In *Gian Singh v. State of Punjab*, (2012) 10 SCC 303, the Supreme Court has observed as under:

"55. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim *quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest*. The full import of which is whenever anything is authorised, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorised in express terms be also done, may also be done, then that something else will be supplied by necessary intendment. *Ex debito justitiae* is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists. The power possessed by the High Court under Section 482 of the Code is of wide amplitude but requires exercise with great caution and circumspection.

56. It needs no emphasis that exercise of inherent power by the High Court would entirely depend on the facts and circumstances of each case. It is neither permissible nor proper for the court to provide a straitjacket formula regulating the exercise of inherent powers under Section 482. No precise and inflexible guidelines can also be provided." (emphasis supplied)

7. Ordinarily the High Courts must show restraint in quashing FIRs for offences under Sections 376 IPC and POCSO Act. In the instant case the FIR was registered under Section 363 IPC and Section 376 IPC and Section 6 of the POCSO Act were added later on. The victim/Petitioner No.2 has stated in her 164 statement that she was in love with the Petitioner No.1 and she eloped with him out of her own volition. It is stated they got married in a temple in Uttar Pradesh on the very next day and the Petitioner No.2/victim has given birth to a baby boy. The families of the Petitioners No.1 & 2 have accepted the marriage.

8. Considering the fact that the whole life of Petitioner No.1 and Petitioner No.2 and their child would be ruined, this Court asked the learned APP as to whether she has any objections if this Court exercises its jurisdiction under Section 482 Cr.P.C and quash the FIR. Learned APP for the State very fairly and taking humanitarian approach stated that she has no objections if the instant FIR is quashed.

9. In view of the peculiar facts and circumstances of this case, this Court is inclined to quash the FIR. Resultantly, FIR No.275/2019 dated 30.10.2019 registered at Police Station Delhi Cantt for offences under Section 363/366/376 IPC and Section 6 of the POCSO Act and the proceedings emanating therefrom are hereby quashed.

10. Accordingly, the petition is disposed of along with the pending application(s), if any.

SUBRAMONIUM PRASAD, J FEBRUARY 21, 2022 Rahul