

(2022) 03 J&K CK 0056

In the Jammu And Kashmir High Court

Case No : Criminal Miscellaneous Cases No. 228 Of 2017

Ali Mohammad Gujar

APPELLANT

Vs

Director General Of Police & Others

RESPONDENT

Date of Decision : 30-03-2022

Acts Referred:

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 363
Code Of Criminal Procedure, 1973 — Section 164, 482

Citation : (2022) 03 J&K CK 0056

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Arif Sikander, Asif Maqbool

Final Decision : Allowed

Judgement

Sanjay Dhar, J

1. The petitioner has challenged FIR No.61/20017 for offence under Section 363 RPC registered with Police Station, Tral.

2. Before coming to the grounds urged in the petition, it would be appropriate to notice the allegations made in the impugned FIR. As per the FIR, on 28.08.2017, one Mst. Zooni lodged a written report with Superintendent of Police, Awantipora. In the said report, it was alleged that the daughter of the complainant, who is aged about 17 years, about one month back had gone to attend her classes at Higher Secondary School, Tral, but she did not return. A missing report in this regard was lodged but the girl could not be traced. The complainant went on to allege that now she has come to know that the petitioner/accused has kidnapped her daughter.

3. On the basis of these allegations, the impugned FIR came to be registered and investigation of the case was set into motion. However, vide order dated 25.09.2017 passed by this Court, the investigation in the impugned FIR was stayed. The aforesaid order came to be modified by this Court vide order dated

21.09.2021 and the Investigating Officer was given liberty to get the statement of the alleged victim girl recorded Section 164 Cr. P. C before the concerned Magistrate. Pursuant to the aforesaid direction, statement of the alleged victim has been recorded before the Magistrate and a copy thereof has been placed on record by the official respondents.

4. It is contended in the petition that the alleged victim was aged 23 years at the relevant time. Initially she had entered into a wedlock with one Shri Parvaiz Ali Wana and that the said marriage was solemnized with the consent of the parents of the alleged victim girl. It is further contended that by virtue of an agreement dated 20th August, 2017, marriage between the alleged victim and Shri Parvaiz Ali Wana came to be dissolved by virtue of a Talaq Nama. It has been further averred that the alleged victim has been residing with the petitioner out of her own will and volition and being major, she is free to do so. On this ground, it is contended that no offence is made out against the petitioner.

5. I have heard learned counsel for the parties and perused the record of the case.

6. The allegation made by the impugned FIR against the petitioner is that he has abducted the alleged victim who, according to her mother (the complainant), was aged only 17 years at the relevant time. The petitioner has placed on record a copy of the certificate issued by the Headmaster, Government Middle School, Overigund, which shows that the alleged victim was born on 15.03.1994, meaning thereby that at the time of alleged occurrence she was more than 18 years of age. The petitioner has also placed on record an affidavit sworn by the alleged victim before Judicial Magistrate, 1st Class (Special Mobile Magistrate), Srinagar, wherein she has deposed that the allegation that she has been kidnapped by the petitioner is baseless and concocted. She has further stated that she left her home because she was being pressurized by her mother to marry one of her cousins.

7. As already noted, the statement of the alleged victim under Section 164 of Cr. P. C stands recorded before the Magistrate. In her statement recorded on 02.10.2021, the alleged victim has given her age as 27 years, meaning thereby that she was more than 18 years of age at the time of alleged occurrence. She has stated that in the year 2014, she entered into wedlock with Parvaiz Ahmad Bakarwal but the said marriage was solemnized against her wishes. She has further stated that her first husband was committing cruelty upon her, as a result of which she left his company and started living with her mother till the year 2017. She has further averred that in the year 2017, she fell in love with the petitioner and decided to elope with him. According to alleged victim, her age at the relevant time was 23 years. She has gone on to state that she has accompanied the petitioner out of her own free will and volition and has entered into wedlock with him. She has also stated that she has neither been pressurized nor coerced by anyone to accompany the petitioner. The alleged victim has further stated that at present she resides with the petitioner and out of her

wedlock with him, she has two children

8. From the statement of the alleged victim and the other material placed on record by the petitioner, it is clear that the alleged victim at the time of the alleged occurrence was major aged more than 18 years. It has also come to the fore from the material on record that she has accompanied the petitioner out of her own free will and volition and there has been no enticement or force to compel to her to accompany the petitioner. Force, compulsion, inducement by deceitful means is the gist of offence of abduction. In the instant case, the material on record, as already noticed, does not suggest that the petitioner has either compelled, forced or induced the alleged victim to go with him. Therefore, neither the offence of abduction nor the offence of kidnapping or for that matter any other offence is made out against the petitioner from the material on record.

9. In a recent case titled *Shafiya Khan @ Shakuntala Prajapati vs. State of U. P. & anr.* (Criminal Appeal No.200 of 2022 decided on February 10, 2022) the Supreme Court has, after noticing the principles laid down in *State of Haryana and others vs. Bhajan Lal and others*, 1992 Supp. (1) SCC 335 and *Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and others*, AIR 2021 SC 1918, observed that when the material collected in support of the allegations made in a complaint or FIR do not support the said allegation, continuance of criminal proceedings would be a clear abuse of process of law. Paras 19 and 20 of the judgment are relevant to the context and the same are reproduced as under:

“19. Although it is true that it was not open for the Court to embark upon any enquiry as to the reliability or genuineness of the allegations made in the FIR, but at least there has to be some factual supporting material for what has been alleged in the FIR which is completely missing in the present case and documentary evidence on record clearly supports that her Nikah Nama was duly registered and issued by competent authority and even the charge sheet filed against her does not prima facie disclose how the marriage certificate was forged.

20. In the given circumstances and going through the complaint on the basis of which FIR was registered and other material placed on record, we are of the considered view that no offence of any kind as has been alleged in the FIR, has been made out against the appellant and if we allow the criminal proceedings to continue, it will be nothing but a clear abuse of the process of law and will be a mental trauma to the appellant which has been completely overlooked by the High Court while dismissing the petition filed at her instance under Section 482 Cr.PC.”

10. Analysing the facts of the instant case in the light of the aforesaid enunciation of law on the subject, it would become clear that the material collected during the course of investigation of the case in the shape of statement of the alleged victim recorded under Section 164 of Cr. P. C does not support the allegations made in the impugned FIR. Thus, continuance of criminal proceedings

in such a case would amount to abuse of process of law. The proceedings in the impugned FIR, therefore, deserve to be quashed.

11. Accordingly, the petition is allowed and the impugned FIR is quashed.