

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(Crl.) 59/2010

% Date of Decision: 26th March, 2010

ANURAG KUMAR GANGWAR @ DEEPUPetitioner
! Through: Mr. Ratneshwar Pandey and
Mr. A.S. Gangwar, Advs.

versus

\$ STATE & ORS. Respondent

^ Through: Mr. Saleem Ahmed, ASC with
SI Rajender Prasad

* **CORAM:**
HON'BLE MR. JUSTICE V.K. JAIN

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the Reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

: **V.K. JAIN, J. (Oral)**

1. This is a petition under Article 226 of the Constitution for quashing FIR No. 292/2009 registered at Police Station Vijay Vihar under Section 363 of IPC and for directing Respondents No. 1 and 2 to release Respondent No.3, who is the wife of the petitioner.

2. The FIR in this case was lodged by Shri Rakesh Kumar, father of Respondent No.3, who alleged that his daughter had left the house on 17th June, 2009 for some work and had not returned. He suspected that Anurag Kumar had kidnapped his daughter.

3. Respondent No.3 as well as her parents are present in the Court. On the request of the complainant, who is the father of Respondent No.3, he was given opportunity to talk to respondent No.3. Thereafter, I have recorded the statement of Respondent No.3 as well as of the complainant. According to Respondent No.3, she left the house of her parents on 10th June, 2009 of her own without any pressure, inducement, influence, promise or representation from the petitioner Anurag Kumar. According to her, the petitioner never asked her to leave the house of her parents and join him. She states that at the time she left the house of her parents, the petitioner was working in Muradabad and she of her own, reached Muradabad and after getting down from the bus at Muradabad bus stand, she informed the petitioner on telephone and asked him to come to the bus stand. She further states that she married the petitioner of her own on

12th June, 2009 in Shiv Mandir, Maula Garh, Muradabad and also got the marriage registered with Registrar of Hindu Marriages, Chandosi, Muradabad on 26th June, 2009. She states that she does not want to go with her parents and wants to go only with the petitioner, who is her husband and who is present in the Court alongwith his father. The complainant, who is the father of Respondent No.3 states that he has talked to his daughter, who has declined to go with him and, therefore, he does not want to maintain any connection with her or her husband Anurag Kumar. He, however, has no objection if FIR No. 292/2009 lodged by him at Police Station Vijay Vihar under Section 363 and the proceedings arising therefrom are quashed.

4. In **Neetu Singh vs. State and Ors.** 1999 (1) JCC Delhi 170, a Division Bench of this Court held that the marriage of a minor girl in contravention of Section 5(iii) of Hindu Marriage Act which prescribes minimum age of 18 years for a girl and 21 years for a boy, is neither void nor voidable. This view was reiterated in **Manish Singh Vs. State Govt. of NCT and Ors.** 2006(1) CCC (HC) 208 and **Sunil Kumar Vs. State of NCT of Delhi and Anr.** 2007 (2) LRC 56(Del)(DB). Similar view was

taken in **Ravi Kumar vs. State** 2005 (124) DLT 1 and **Phoola Devi Vs. The State and Ors.** 2005 VIII AD Delhi 256. Though another Division Bench of this Court has referred the matter to a Larger Bench on the ground that the provisions of the Prohibition of Child Marriage Act, 2006 which makes contracting of marriage by a boy above the age of 15 years with a girl who is less than 18 years of age a cognizable offence, the decision of the Division Bench in the earlier cases has not been overruled as yet.

5. The FIR was registered under Section 363 of IPC on a complaint made by the father of Madhuri. In order to constitute offence punishable under Section 363 of IPC, there has to be taking or enticing of a minor from the lawful guardianship of her parents/guardian. If the minor, of her own, abandons the guardianship of her parents and joins a boy, without any role having been played by the boy in her abandoning the guardianship of her parents and without her having been subjected to any kind of pressure, inducement, etc. and without any offer or promise from the accused, no offence punishable under Section 363 of IPC will be made out when the girl is aged more than 17 years and is mature

enough to understand what she is doing. Of course, if the accused lays a foundation by inducement, allurement etc. and that influences the minor or weighs with her in leaving her guardian's custody and keeping and going with the accused then it is difficult to accept that the minor had voluntarily come to the accused.

6. In '**Shyam & Another vs State of Maharashtra**', 1995 Criminal Law General 3974, the prosecutrix was a grown-up girl, though she had not touched 18 years of age. She claimed during trial that she was kidnapped under threat. The evidence produced during trial showed that she was seen going on the bicycle of the accused. The Hon'ble Supreme Court noted that it was not unknown to her with whom she was going and therefore, it was expected of her then to jump down from the bicycle or put up the struggle and in any case raise an alarm to protect herself. As no such steps were taken by her, the Hon'ble Supreme Court felt that she was a willing party to go with the appellants of her own and, therefore, there was no taking out of the guardianship. The appellants were acquitted of the charge under Section 366 of IPC.

7. In '**State of Karnataka vs Sureshbabu**', 1994

Crl.L.J.1216(1), it was found that the girl went with the accused voluntarily. It was held by the Hon'ble Supreme Court that the requirement of Section 366 of IPC is that taking or enticing away a minor out of the keeping of the lawful guardianship was an essential ingredient of the offence of kidnapping. It was held that in such a case, it is difficult to held that the accused had taken her away from the keeping of her lawful guardian and something more has to be shown in a case of this nature, like inducement.

8. In '**Mahabir vs State**', 55(1994) DLT 428, the appellant and the prosecutrix were known to each other. The appellant took the prosecutrix to a place outside Delhi where they stayed for about fifteen days and had sexual intercourse with each other. The appellant was convicted under Sections 366 and 376 of I.P.C. A learned Single Judge of this Court noticed that she had gone to Railway Station, had stood there with the appellant who also went to purchase tickets and then she had travelled with him in a compartment shared by other persons. She had then gone to a house in a tonga and yet she did not lodge any protest and made no attempt to flee despite having ample time and opportunity. The learned Single Judge noted

that on the day of reckoning, she surely had crossed mark of sixteen years and since she was all along a willing party, the appellant was acquitted of both the charges against him. Thus, despite the prosecutrix being less than eighteen years of age, the appellant was acquitted not only of charge under Section 376 but also of the charge under Section 366 of I.P.C.

9. In '**Piara Singh vs State of Punjab**', 1998(3) Crimes 570, the High Court found that the prosecutrix was more than sixteen years of age at the time of this incident, though, the case of the prosecution was that she was fourteen years of old at that time. Since the High Court came into conclusion that no force was used in having sexual intercourse with him, the appellant was acquitted not only of charge under Section 376 but also of charge under Section 366 and 366-A of Indian Penal Code. In this case also, the prosecutrix was not found to be more than eighteen years of age.

10. In '**Bala Saheb vs State of Maharashtra**', 1994 Criminal Law General 3044, it was found that the prosecutrix accompanied the appellant/accused from her village and stayed with him for two to three days. It was held that these circumstances clearly show that offence under Section 363 or

366 of I.P.C. was not made out.

11. In the present case, there has been no coercion, inducement or promise on the part of petitioner. Respondent No. 3 abandoned the guardianship of her parents of her own went up to Muradabad. She then married him of her own and also got the marriage registered and persuaded the petitioner to come to the bus stand and take her with him. She was capable of understanding the implications of the step taken by her. Thus, no role at all was played by the petitioner in Respondent No.3 leaving the house of her parents. No kidnapping, as defined in Section 361 of IPC, is, therefore, made out against the petitioner.

12. Considering the fact that no offence punishable under Section 363 of IPC is made out against the petitioner, respondent No.3 is already married to the petitioner, wants to live only with him and has flatly refused to go with her parents, and even the complainant has no objection to quashing of the criminal proceedings initiated by him, I feel that no useful purpose will be served from continuing the criminal proceedings initiated in this case. Hence, FIR No. 292/2009 registered at Police Station Vijay Vihar under

Section 363 and the criminal proceedings arising therefrom are hereby quashed. Respondent No.3 be released forthwith from Nari Niketan where she is presently lodged. She will be at liberty to go with the petitioner, if she so desires.

(V.K.JAIN)
JUDGE

MARCH 26, 2010

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