

**.HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

CRM(M) No.255/2021

Reserved on: 30.10.2023
Pronounced on: 30.11.2023

**Hassan Din S/o Mohd. Sultan
R/o Village Dharamkot, Tehsil Billawar,
District Kathua**

..... Appellant(s)

Through: Mr. Rahul Aggarwal, Advocate vice
Mr. V. Bhushan Gupta, Advocate.

V/s

- 1. Union Territory of J&K
through SHO Police Station Billawar, District Kathua.**
- 2. Kamal Kishore S/o Pritam Lal R/o Dharamkot Billawar,
District Kathua.**
- 3. Chaman Lal alias Vicky Dogra S/o Pritam Lal
R/o Dharamkot, Billawar, District Kathua.**
- 4. Pritam Lal S/o Biru Ram R/o Dharamkot,
Billawar, District Kathua.**
- 5. Rohit Kumar S/o Isher Dass R/o Dharamkot,
Billawar, District Kathua.**
- 6. Pooja Devi W/o Sanjit Kumar R/o Kishanpur,
Tehsil Billawar, District Kathua.**

.....Respondent(s)

Through: Mr. Dewakar Sharma, Dy.AG.

CORAM:

HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT

- 1. Petitioner has invoked inherent jurisdiction of this Court, under
Section 482 of Criminal Code of Procedure, 1973 ('Cr.P.C.', for short), for**

quashment of order dated 23.03.2021 passed by learned Judicial Magistrate 1st Class, Billawar ('trial Court', for short), in case No.13/IKHTAMI, vide which protest petition filed by the petitioner against the closure report filed by the investigating agency in FIR No.37/2022 of Police Station Billawar came to be dismissed.

2. Some uncontroverted facts of the case are that daughter of the petitioner, namely, Yasmin Bano, went missing. He lodged a missing report, which came to be entered in Daily Diary No.5 dated 21.03.2020 in Police Station Billawar and later FIR No.37/2020 for offences under Section 366/109 IPC came to be registered in the said Police Station on 02.05.2020. Daughter of the petitioner was recovered on 07.10.2020 from the custody of respondent No.2 at Lakhanpur Nakka and he was arrested. Statement of the girl was recorded by the trial Court, whereby she deposed that she had converted from her religion of birth, i.e. Islam and embraced Hindu religion and assumed her new Hindu name as 'Mahi'. She also stated that she fell in love with and married respondent No.2 out of her volition under the Arya Samajis' way of life. She alleged that her 'Nikah' with one Altaf Hussain was only an engagement and was not a marriage. On the basis of this statement, accused/respondent No.2 came to be released on bail by the trial Court on 08.10.2020. The investigation culminated into a closure report filed in the trial court on 07.01.2021, which came to be registered as file No.13/Challan. The petitioner being complainant was summoned by the trial Court on 30.01.2021. He filed a protest petition and assailed the closure report on various grounds. However, learned trial Court vide impugned order dismissed his protest petition.

3. Allegation of the petitioner is that his daughter, a simpleton village girl with humble background and humble worldly exposure, was kidnapped by respondent No.2 against her wish with the connivance of other private respondents. The investigating agency, however, failed to conduct fair investigation.

4. The petitioner has questioned the impugned order *inter alia* on the grounds that power exercised by the learned trial Court is an abuse of process of law and resulted in miscarriage of justice. According to the petitioner, since his daughter remained in the custody of accused persons, therefore, statement recorded by the Magistrate under Section 164 Cr.P.C. cannot be termed voluntary. It is also contended by the petitioner that statement of the prosecutrix has not been recorded by the trial Court in accordance with law and he has not been afforded sufficient time to lead evidence and reasonable opportunity of being heard.

5. The petition has been resisted by the respondents, primarily, on the ground that since the alleged abductee made her statement before learned trial Magistrate out of her free will and she had attained majority, therefore, no offence was made out against the respondents and learned trial Court has rightly passed the impugned order, whereby protest petition filed by the petitioner was dismissed.

6. Heard rival contentions and perused the record.

7. It is an admitted position of fact on the record that daughter of the petitioner at the time of alleged occurrence had attained majority. Therefore, she was free to marry or live with any person of her choice or anyone she likes. There is no bar in law to inter caste or inter religion marriage. During

the course of investigation, daughter of the petitioner came to be recovered from the custody of respondent No. 2. Her statement was recorded before the Magistrate under Section 164 Cr. P.C., whereby she categorically stated that she fell in love with respondent No. 2 and married him out of her volition. She also stated that she had converted from her parent religion and embraced Hinduism by changing her name from 'Yasmin Bano' to 'Mahi'. It was rather alleged by her that since her father had forcibly arranged her marriage with someone else, therefore, she decided to elope with the person whom she loved and wanted to marry. She clarified in her statement that she had married respondent No. 2 out of her free will and now wanted to spend her life with him. The allegation of the petitioner that his daughter made the statement under duress and pressure of the respondents, is baseless because daughter of the petitioner having attained majority, in such a case would have narrated any such incident of harassment or pressure to the magistrate at the time of recording of her statement.

8. It appears from the factual background of the present case that petitioner got infuriated with the decision of his daughter to marry a person of her choice and that too out of her religion. It is a matter of common knowledge that young couples who undergo inter caste or inter religious marriages are threatened with violence or violence is actually done to them, which is totally illegal and not acceptable in a civilised society. We also come across incidents of 'honor killing' of persons who prefer to undergo inter caste or inter religious marriages. As a matter of fact, there is nothing honourable in such acts and they are nothing but brutal murders. Such acts of violence or threats of violence or harassment are not only against all cannons of law but their perpetrators are required to be dealt with in accordance with

law. A boy or a girl having attained the age of majority, is at liberty to marry or live with a person of his or her choice and any person who comes in the way or threaten the couple with violence or cause any kind of harassment deserves appropriate punishment.

9. For what has been observed and discussed above, present petition is nothing but an abuse of the process of law, hence dismissed.

(RAJESH SEKHRI)
JUDGE

JAMMU:
30.11.2023
EVA

Whether the Judgment is speaking?	Yes
Whether the Judgment is reportable?	Yes

