

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE**

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 12th OF JANUARY, 2024

WRIT PETITION No.13722 of 2019

BETWEEN:-

1. AJAY KUMAR JAIN S/O RAJNIKANT JAIN, AGED ABOUT 26 YEARS, OCCUPATION: PRIVATE WORK, R/O 226, SAHAJPUR KESLI SAHAJPUR, DISTT. SAGAR (MADHYA PRADESH)
2. RAJNIKANT JAIN S/O LATE TARACHAND JAIN, AGED ABOUT 60 YEARS, OCCUPATION: PRIVATE JOB R/O 226, SAHAJPUR KESLI SAHAJPUR, DISTT. SAGAR (MADHYA PRADESH)
3. GOURAV JAIN S/O RAJNIKANT JAIN, AGED ABOUT 24 YEARS, OCCUPATION: STUDENT R/O 226, SAHAJPUR KESLI SAHAJPUR, DISTT. SAGAR (MADHYA PRADESH)
4. SOURABH JAIN S/O DHARMENDRA KUMAR JAIN, AGED ABOUT 21 YEARS, OCCUPATION: STUDENT R/O 226, SAHAJPUR KESLI SAHAJPUR, DISTT. SAGAR (MADHYA PRADESH)

.....PETITIONERS

(BY SHRI NITIN JAIN - ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH PRINCIPAL SECRETARY HOME (POLICE) VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)
2. DIRECTOR GENERAL OF POLICE POLICE HEADQUARTERS BHOPAL (MADHYA PRADESH)

3. SUPERINTENDENT OF POLICE, RAISEN (MADHYA PRADESH)
4. STATION HOUSE OFFICER, POLICE STATION SULTANGANJ, RAISEN (MADHYA PRADESH)
5. SHIVANI W/O AJAY KUMAR JAIN D/O SHIVRAJ SINGH, AGED ABOUT 20 YEARS, R/O 226 SAHAJPUR, KESLI SAHAJPUR, DISTT. SAGAR (MADHYA PRADESH)

.....RESPONDENTS

(RESPONDENTS NO.1 TO 4/STATE BY SMT. SWATI ASEEM GEORGE - DEPUTY GOVERNMENT ADVOCATE)

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This petition coming on for orders this day, the court passed the following:

ORDER

This petition under Article 226 of Constitution of India has been filed for quashment of FIR in Crime No.80/2019 registered at Police Station Sultanganj, District Raisen for offence under Sections 366, 498-A, 34 of IPC.

2. Petitioners have filed a copy of marriage agreement notarized by Rajendra Saxena, Public Notary, Chhatarpur to the effect that they have performed Court marriage in Chhatarpur Court premises. It is also mentioned that marriage has also been performed by following the ritual of exchange of garland (*Varmala*) and filling up of *Maang* with vermilion (*Sindoor*).

3. Counsel for petitioners could not point out any provision of law which acknowledges the performance of marriage by exchange of garland (*Varmala*).

4. In Hindu law, marriage is not a contract and unless and until *Sapt padi* is performed, there cannot be said to be a valid marriage.

5. Under these circumstances, ground raised by counsel for petitioners that petitioner No.1 as well as prosecutrix are validly married couple, cannot be accepted specifically in the light of the statement made by respondent No.5 about her abduction. Furthermore, in *Habeas Corpus* Writ Petition, she had specifically made a statement before this Court that she wants to reside with her parents.

6. Considering the fact that petitioners had executed a marriage affidavit and had projected that respondent No.5 is validly married wife of petitioner No.1 by exchange of garland, this Court is of the considered opinion that petitioners had given a bonafide belief in the mind of respondent No.5 that she is legally wedded wife of petitioner No.1.

7. Section 375 (*fourthly*) of IPC reads as under:-

"Fourthly.—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married."

8. Even otherwise, it is well established principle of law that this Court in exercise of power under Section 482 of Cr.P.C./ Article 226/227 of Constitution of India should not kill an unborn baby and should not bring the investigation to a halt and by restraining the respondents/ Police from collecting the evidence.

9. Considering the facts and circumstances of the case coupled with the allegations made by respondent No.5 in the FIR that applicant No.1 had forcibly brought her to Jabalpur and took her to the High Court

premises and contacted with a Lawyer and compelled her to sign certain papers as well as in the light of averments made in the FIR, it is clear that the same make out a *prima facie* case of cognizable offence.

10. Under these circumstances, no case is made out warranting interference.

11. Petition fails and is hereby **dismissed**.

12. Interim order dated 21/08/2019 is hereby **vacated**.

13. Police is directed to complete the investigation as required under Section 173(1) of Cr.P.C.

(G.S. AHLUWALIA)
JUDGE

S.M.