

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-27097 of 2015 (O&M)
Date of Decision: 27.8.2015

Amanpreet Singh

.....Petitioner

Vs.

Rupinder Kaur

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Sandeep S. Majithia, Advocate
for the petitioner.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAMESHWAR SINGH MALIK J.

Petitioner, by way of instant petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), seeks quashing of the FIR No. 31 dated 8.2.2015 under Sections 365/120-B of the Indian Penal Code ('IPC' for short), registered at Police Station Jamalpur, District Ludhiana and the consequential proceedings arising therefrom.

Learned counsel for the petitioner submits that respondent-wife was trying to misuse the process of law, because the petitioner cannot be held guilty of kidnapping his own child. Placing reliance on a judgment of the Hon'ble Supreme Court in Chandrakala Menon Vs. Capt. Vipin Menon, 1993 (2) SCC 6 and a judgment of this Court in Gurdial Kaur Vs. Dalbir Singh and another, 2007 (1) RCR (Criminal)

975, learned counsel for the petitioner contends that registration of the impugned FIR and continuation of the criminal proceedings arising therefrom, would be nothing but sheer abuse of process of law. He further submits that even if the allegations levelled in the impugned FIR are treated to be true on their face value, still no offence, whatsoever, is made out against the petitioner, because he took away his own son, who was aged about 6 years. He prays for quashing the impugned FIR, alongwith subsequent criminal proceedings arising therefrom, by allowing the present petition.

Having heard the learned counsel for the petitioner at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the arguments advanced, this Court is of the considered opinion that in the given fact situation of the present case, instant one has not been found to be a fit case, warranting interference at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C. To say so, reasons are more than one, which are being recorded hereinafter.

It is a matter of record and not in dispute that divorce petition filed by the petitioner himself is pending consideration before the learned court of competent jurisdiction. Another appropriate petition, filed by the petitioner himself, seeking custody of the child is also pending consideration before the learned court of competent jurisdiction. Petitioner was well aware about his right to have the custody of his child (son), who was aged about 6 years.

However, after having moved the court for getting the custody of his son, petitioner kidnapped the child. It is also an

undisputed fact that the child was in the custody of his mother-respondent. Having said that, this Court feels no hesitation to conclude that since the intention of the petitioner was malafide and he kidnapped the child, with a view to put unwarranted pressure on his wife-respondent, the present petition is liable to be dismissed.

Another equally important aspect of the matter is that despite having instituted the abovesaid divorce petition and another petition seeking custody of the child, petitioner did not mention anything about this fact in the present petition. The reason is obvious. Petitioner wanted to conceal this material fact from the notice of this Court which amounts to glaring misuse of process of law. In such a situation, it can be safely concluded that a person who does not have any respect to the justice delivery system, is not entitled to any kind of sympathy of the Court, as well.

Coming to the judgments relied upon by the learned counsel for the petitioner, there is no doubt about the law laid down therein, however, on a careful perusal thereof, none has been found to be of any help to the petitioner, being distinguishable on facts. In both the cited judgments, child was not living with mother. In Gurdial Kaur's case (supra), daughter aged about 10 years was living with her maternal grandmother. The allegation against the father was that he took away the daughter with intention to kill her, which was not believed by the court. In Chandrakala Menon's case (supra), the daughter, who was aged about 7 years, was living with her maternal grand parents. She was taken away by her father because her mother was pursuing higher studies in America.

So far as present petition is concerned, facts of the case are entirely different, as noticed hereinabove. Further, it is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundra Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

In the present case, child was about 6 years old. His mother having been turned out of matrimonial home by the petitioner and his parents, was living with her twin children, one son and a daughter, at her parental house. The respondent mother would be natural guardian of the child. Otherwise also, until and unless, contrary is proved, custody of the child of a tender age, as in the present case, would be given to the mother, in the normal circumstances. In such a situation, the irresistible conclusion is that petitioner proceeded on a guilty intention, while kidnapping the child.

It is not even the argued case on behalf of the petitioner that he did not kidnap the child. The only argument in this regard was that taking away of the child by the petitioner from the custody of his mother, while the child was playing with other children, would not amount to kidnapping, is to be noted to be rejected. It is so said, because once the petitioner has filed petitions for seeking divorce as well as custody of the child, which are pending consideration before the learned court of competent jurisdiction, taking away the child by the petitioner would certainly amount to kidnapping. Thus, the

present petition is liable to be dismissed, for this reason also.

The law Commission of India, in its recent report, made the recommendations for amending the Constitution to ensure that children below six years of age, are protected from “all forms” of neglect, harm and exploitation. It has also been recommended that right of the children to basic care and assistance, should be made an enforceable right. It is also highlighted by the Law Commission of India that early childhood is the phase of 'Maximum Vulnerability' and deprivation can seriously impact a child's health and learning potential.

Considering the abovesaid recommendations made by an expert body like the Law Commission of India, this Court is of the view that such kind of act of the petitioner, would certainly have serious and adverse impact on the physical as well as mental health of the child. In fact, since *mens rea* is clearly reflected from the act and conduct of the petitioner, the impugned FIR is not liable to be quashed, it being a legitimate prosecution.

It is the settled proposition of law that an FIR can be quashed only if no offence of any kind, whatsoever, is made out, even if treating the allegations levelled in the impugned FIR, to be true on their face value, without adding anything thereto or without subtracting anything therefrom. However, the present case does not fall in this category, because the impugned FIR has rightly been lodged against the petitioner which is not liable to be quashed.

In this regard, the Hon'ble Supreme Court in its celebrated judgment in **State of Haryana versus Bhajan Lal and others, AIR**

1992 SC 604, laid down the broad principles, as guiding factors for invoking the inherent jurisdiction under Section 482 Cr.P.C. by this Court, for the purpose of quashing FIR. The relevant guidelines of the Hon'ble Supreme Court in Bhajan Lal's case (supra), which can be gainfully followed in the present case, are as under:-

(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a

Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge”

Reverting back to the facts of the present case and respectfully following the law laid down by the Hon'ble Supreme Court in Bhajan Lal's case (supra), which has been consistently followed in later judgments as well, it is unhesitatingly held that the present case does not fall under any of the abovesaid guidelines

carved out by the Hon'ble Supreme Court, so as to enable this Court to invoke its inherent jurisdiction, for the purpose of quashing of the impugned FIR. Thus, the present petition is liable to be dismissed for this reason, as well.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present petition is misconceived, bereft of merits and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, present petition stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

27.8.2015
Ak Sharma