

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No. 2283 of 2016(O&M)

Date of decision : 14.07.2016

Kulwinder Kaur

..... Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Ashish Bakshi, Advocate for the petitioner.

Mr.K.S.Pannu, DAG, Punjab.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

This petition has been filed against the concurrent conviction of the Courts below under Section 363/365 IPC.

Custody certificate by way of affidavit of Chanchal Kumari, Superintendent, Women Jail, Ludhiana has been filed and the same is taken on record. Copy supplied to learned counsel for the petitioner.

The brief facts are that the complainant who is a labourer lived with his family in a rented room and in another part of the same building the petitioner and her husband who is a childless couple also stayed. On 30.03.2012 the petitioner along with her husband took the 2½ year old daughter of the complainant on the pretext of taking her to the market but she did not bring her back. Ultimately the child was recovered from the custody of the petitioner and her husband on 05.05.2012 from Rama Mandi,

Jalandhar and the petitioner and her husband were put on trial for the offences mentioned above. Both the Courts below found that the petitioner did not give any suggestion to the witnesses of the complainant that they had taken away the child with the consent of the parents. Moreover no cross examination was conducted on the recovery of the child from the custody of the petitioner and her husband. However, since it was not a case of kidnapping for ransom but a case where a childless couple took the law into their own hands, the Courts below have sentenced the petitioner and her husband for 2 years rigorous imprisonment.

Learned counsel for the petitioner has argued that actually the petitioner had taken the child in adoption but he has clearly mentioned that the petitioner has not led any evidence in support of this plea nor has cross examined the witnesses of the complainant on the aspect of the child being in their permissive custody. Learned DAG has argued that even if the motive of the petitioner was only to provide home to the child, yet she could not have taken the child away from the custody of her lawful parents in such a cavalier manner. He has argued that it is a case where notice should be issued to the petitioner for enhancement of sentence. However, keeping in view all the facts I do not deem it appropriate to either accept the plea of learned counsel for the petitioner or of learned DAG and dismiss this petition.

Since the main case has been decided, the Civil Misc. Application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

July 14, 2016
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