

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2165 OF 2016

- 1) Arfath Ahmed s/o Abrar Ahmed Siddiqui,
Age-27 years, Occu:nil,
R/o-Plot No.36, Park Lane,
Roza Bagh, Aurangabad,
- 2) Abrar Ahmed Siddiqui s/o Mohd. Ishak,
Age-56 years, Occu:Business,
R/o-Plot No.36, Park Lane,
Roza Bagh, Aurangabad,
- 3) Shaikh Dastgir Shaikh Shabbir,
Age-32 years, Occu:Labour,
R/o-N-12, Roza Bagh, Aurangabad.

...APPLICANTS

VERSUS

- 1) The State of Maharashtra,
- 2) Nadiya w/o Arafat Ahmed Siddiqui,
Age-23 years, Occu:Household,
R/o- At present City Towner,
In front of Maulana Azad College,
Roza Bagh, Aurangabad.

...RESPONDENTS

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Mr. N.S. Ghanekar Advocate for Applicants.

Mr. S.P. Deshmukh, A.P.P. for Respondent No.1.

Mr. Moinuddin Shaikh Advocate h/f. Mr. S.S. Kazi
Advocate for Respondent No.2.

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**CORAM: S.S. SHINDE AND
K.K. SONAWANE, JJ.**

DATE OF RESERVING ORDER : 13TH APRIL, 2017.

DATE OF PRONOUNCING ORDER : 18TH APRIL, 2017.

JUDGMENT [PER S.S. SHINDE, J.] :

1. By way of filing this Application, the Applicants have prayed for quashing and setting aside the First Information Report bearing Crime No.0335 of 2016 registered with Kranti Chowk Police Station, Aurangabad for the offence punishable under Section 363 read with 34 of the Indian Penal Code.

2. Learned counsel appearing for the Applicants submits that First Information Report is registered by Respondent No.2 with an allegation that on 28th March, 2016 custody of minor daughter Ashra was with Applicant No.1 and therefore there was no question of taking minor daughter from the custody of Respondent No.2. It

is submitted that the ingredients which are required to constitute offence under Section 363 of the I.P. Code are not attracted upon reading the allegations in the First Information Report. Even if the learned Magistrate has passed the order of handing over custody of Nashra to Respondent No.2, Applicant No.1 had right to challenge the said order by filing appeal in the Court of Sessions. Not handing over the custody of daughter immediately to Respondent No.2, does not amount to any offence. Respondent No.2 herself mentioned in the First Information Report that order came to be passed beyond the Court time. It is submitted that, as the health of daughter Nashra was not well, she was taken for providing medical treatment on the date when the Magistrate has passed the order. Subsequently, by filing application and taking case on Board, custody of Nashra was given to Respondent No.2. Respondent No.2 left the company of Applicant No.1 four months prior to filing of application for custody

and during the period of said four months, Nashra was looked after by Applicant No.1. During the period of said four months, Respondent No.2 did not even bother to make enquiry of Nashra. Only in order to harass the Applicants, the First Information Report is lodged. In support of his contention that since Applicant No.1 is father of Nashra, natural guardian, an ingredients of alleged offence punishable under Section 363 of the I.P. Code are not attracted, he placed reliance on the reported Judgment in the case of **Chandrakala Menon (Mrs.) and another vs. Vipin Menon (Capt.) and another**¹ and also in the case of **Bapu s/o Kisan Ladkat and others vs. State of Maharashtra and others**².

3. On the other hand, learned counsel appearing for Respondent No.2, invites our attention to the affidavit-in-reply filed by Respondent No.2. It is submitted that though the

1 (1993)2 S.C.C.6

2 2006 ALL M.R.(Cri.) 2984

Court of Judicial Magistrate, First Class, at Aurangabad directed Applicant No.1 to handover custody of Nashra to Rspondent No.2, Applicant No.1 snatched the minor daughter from Respondent No.2 and also behaved with Respondent No.2 in rude attitude on the date when the Magistrate passed the order. Therefore, it is submitted that the Application may be rejected.

4. We have considered the submissions of the learned counsel appearing for the Applicants and Respondent No.2 and also learned A.P.P. appearing for the State. Learned A.P.P. appearing for State, on written instructions, makes statement that supplementary statement of Respondent No.2 is recorded by the concerned Investigating Officer. In said supplementary statement, Respondent No.2 has stated that First Information Report was lodged out of misunderstanding and she has no any grievance against anybody, and therefore "C" summary report was prepared and sent in the office

of Assistant Commissioner of Police (City), Aurangabad for approval. As already submitted by the learned A.P.P., it appears that already "C" summary report is sent to the office of the superior police officer for approval/sanction. Therefore, we do not wish to go into greater details of the allegations in the First Information Report or the contentions raised by the Applicants. It is not in dispute that Applicant No.1 is father of Nashra and therefore natural guardian. It further appears that on the date of passing the order by the Magistrate, though direction was given to Applicant No.1 to handover custody of Nashra immediately, since Nashra was suffering from ill-health she was hospitalized and subsequently discharged from the hospital.

5. Therefore, in our opinion, even otherwise allegations in the First Information Report are not sustainable. But since "C" summary report is

filed for approval to the superior police officer by the Investigating Officer, we do not propose to enter upon merits of the matter at greater detail. In the light of discussion herein above, since Respondent State has decided to file "C" summary report, leaving open the remedy to the parties to contest "C" summary report, the Criminal Application stands disposed of.

[K.K. SONAWANE, J.]

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[S.S. SHINDE, J.]