

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-8319-2017 (O&M)
Date of decision : 29.11.2017

Krishan Kumar and others

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Sherry K. Singla, Advocate,
for the petitioners.

Ms. Anju Arora, Addl.A.G., Punjab,
assisted by ASI Mohinder Kumar.

Respondent No.2 in person with
Ms. Mahima Yashpal, AAG, Haryana/amicus curiae.

JITENDRA CHAUHAN, J.

This petition under Section 482 of the Code of Criminal Procedure has been filed, *inter alia*, for quashing of FIR No.82 dated 20.08.2016, registered under Sections 361, 364-A, 365, 454 and 120-B of the Indian Penal Code, at P.S. Nurpur Bedi, Distirct Roopnagar.

The issue in question pertains to the custody of Aditi Sharma, daughter of respondent No.2 and maternal grand-daughter of petitioner No.1, whereas, petitioner Nos.2 to 4 are her maternal uncles and aunt respectively. As per record, the statement of the alleged detainee was recorded by the trial Court as well as this Court, wherein, she had stated that she had been happily residing with petitioner Nos.1 and 2. Learned counsel refers to Will dated 21.11.2014, executed by the mother of the alleged

detenue, Sonika Sharma, since deceased, wherein, she had expressed her desire that after her death, petitioner Nos.1 and 2 would look after the child. Even otherwise, the respondent has the remedy of approaching the competent Court for seeking custody of the child under the Guardian and Wards Act.

On the other hand, it has been asserted on behalf of respondent No.2 that after the death of his wife, he is the natural guardian of the minor daughter. The instant FIR was got registered in pursuance of the directions issued by of learned JMIC, Anandpur Sahib, after observing that a prima facie case was made out against the petitioners.

Heard.

On 30.05.2017, the following order was passed by this Court:-

*“In pursuance of the undertaking made before Hon'ble the Supreme Court, respondent No.2 has already made a part payment of Rs.13,50,000/- out of 17 lakh in the name of child, Aditi Sharma. As per the record, respondent No.2 has also been paying regularly towards the child's expenses including the school fee. This Court on 19.12.2016 interacted with child, Aditi Sharma, aged 19 years and recorded that the child does not wish to live with her father. **Considering the fact that the father, respondent No.2 has paid substantial amount in terms of the undertaking and the issue of paternity being not in dispute and considering the fact that petitioner No.1 is widower and the son of petitioner No.1 has his own family including his wife and two children, to consider the bonafide of petitioner No.1, the Court inquired from petitioner No.1 whether he is ready to transfer 1/3rd share of the land held by him in***

***the name of child in issue, Aditi Sharma, however, petitioner No.1 made many evasive responses** (emphasis supplied). In the circumstances, since respondent No.2 has been paying the expenses, this Court feels that the visiting rights deserves to be allowed to respondent No.2. Accordingly, it is ordered that respondent No.2 shall meet the child at the Mediation and Conciliation Centre of District Ropar on working Saturdays at 11 a.m for one hour. The petitioners assure to extend full cooperation in the matter.*

Post again on 09.08.2017.”

The allegations against the petitioners are that they took away the daughter of complainant-respondent No.2 from his lawful custody at his back, without his permission and consent. On the directions of learned JMIC, Anandpur Sahib, the FIR was registered and inquiry was conducted by the police. The petitioners have been indicted in the enquiry conducted by the SSP, Roopnagar.

The petitioners have not been able to explain as to how their involvement is not made out in the matter. Rather, specific allegations have been levelled against them, which makes out a prima facie case against the petitioner at this stage.

Hon'ble the Supreme Court has laid various guidelines on the subject in case reported as ***State of Haryana and others Vs. Ch. Bhajan Lal and others, 1991(1) RCR (Crl.) 383***, which are reproduced 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 265 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.”*

A perusal of the above guidelines would show that in cases,

where disputed question of fact is involved and requires evidence to prove

the same, provisions of Section 482 Cr.P.C. ought not be invoked. In the case in hand, the allegations in the complaint constitute a cognizable offence justifying registration of case and investigation thereon and does not fall under any of the categories enumerated above. Similar view has been taken by this Court, in *M/s Hybrid Seeds and Pesticides, Abohar Vs. State of Punjab (P&H), 1997(3) R.C.R. (Criminal) 768*.

In view of the above, the Court feels that no cause of action has arisen in favour of the petitioners to invoke the inherent jurisdiction of this Court by way of filing the instant petition. Consequently, the instant petition is dismissed.

29.11.2017
atulsethi

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No