

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.6612 of 2017

ORDER:

In this petition filed under Section 482 Cr.P.C. the petitioner/accused seeks to quash the proceedings against him in Crime No.186/2016 of Pendurthy PS, Visakhapatnam City, registered for the offence under Section 363 IPC.

2) Briefly stating, the allegations in the complaint lodged by the wife of the accused are that the accused, who is the father of A.Sai Krishna, a 5 years old boy, has taken away the boy from the Mahati Public School on 13.04.2016 and thus kidnapped him.

3) Investigation is reported to be pending.

4) Denying the allegations, it is argued that the petitioner and the *defacto* complainant were married on 17.06.2006 at Kakinada and they were blessed with a son—Sai Krishna on 27.04.2010 and the petitioner being vexed with unbearable and intolerable harassment meted out by the complainant towards him, obtained divorce in O.P.No.1872/2013 on the file of Judge, Family Court, Ranga Reddy District at L.B.Nagar on 28.04.2014. It is further submitted that when the boy was with the petitioner till 25.10.2014, suddenly one day, he came to know that the complainant lodged a false report before KPHB PS alleging that the petitioner and her son—Sai Krishna were missing. The petitioner approached the KPHB PS and informed that the boy was under his safe custody. However, the Inspector directed the petitioner to come to PS

with the boy on 24.01.2015 and when he did so, the Inspector handed over the boy to the complainant without listening to him. Ultimately, the petitioner filed O.P.No.471/2015 before the XV Additional District and Sessions Judge-cum-II Additional Family Judge, Ranga Reddy District at L.B.Nagar, under Sections 7 to 25 of Guardians and Wards Act, to grant the custody of the minor boy and the said petition was allowed on 10.02.2016. The complainant is very much aware of the said judgment. However, the complainant gave a false report to police as if the petitioner kidnapped the boy. Learned counsel would submit that as per the order in O.P.No.471/2015, the boy was with the father and the allegation that the petitioner kidnapped him is preposterous. He submitted that the boy is with his father at Dubai and he is studying there and therefore, the continuation of the proceedings in FIR No.186/2016 of Pendurthy PS, Visakhapatnam City, would amount to abuse of process of law and hence may be quashed.

5) Notice was ordered to 2nd respondent. This Court directed the Investigating Officer to produce the complainant. On 26.04.2018, this Court produced the parents of the complainant as she was not feeling well. This Court informed them about the order dt.10.02.2016 in O.P.No.471/2015 on the file of XV Additional District and Sessions Judge-cum-II Additional Family Judge, Ranga Reddy District at L.B.Nagar, to which they pleaded their ignorance.

6) Learned Additional Public Prosecutor opposed the petition contending that though the order was passed by the competent Court,

the petitioner has not informed the complainant before the taking boy with him.

7) As can be seen, the facts would disclose that in O.P.No.471/2015 the learned XV Additional District and Sessions Judge-cum-II Additional Family Judge, Ranga Reddy District at L.B.Nagar, passed an order granting permanent custody of minor child—Sai Krishna to the petitioner/accused. The order reads that the respondent/complainant for the reasons best known to her remained *ex parte*. The said order was passed on 10.02.2016, whereas according to complainant, the boy was kidnapped on 13.04.2016, by which date, the order of the competent Family Court was in force. In that view, the continuation of the criminal proceedings in Crime No.186/2016 would amount to abuse of process of law, as being held by the Apex Court in *State of Haryana v. Ch. Bhajan Lal*¹ and therefore, the proceedings against the petitioner are liable to be quashed.

8) In the result, this Criminal Petition is allowed and the proceedings against the petitioner in Crime No.186/2016 of Pendurthy PS, Visakhapatnam City, are quashed.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 01.05.2018

SCS

¹ AIR 1992 SC 604