

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Revision No. 1509 of 2012 (O&M)
Date of decision : November 29, 2018

Munish Gupta

....Petitioner

versus

Saurav Tandon and others

....Respondents

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Sandeep Sharma, Advocate and
Mr. Gurinder Singh Dhillon, Advocate, for the petitioner

Mr. Harparteek Singh Sandhu, Advocate, as
Legal Aid Counsel for respondent nos. 1 and 2

Mr. Dhruv Dayal, Sr. DAG, Punjab for the State/
respondent no. 3

Fateh Deep Singh, J. (Oral)

CRM-30204-2012

For the reasons mentioned in the application which is supported by an affidavit, in the interest of justice and the fact that the party should not be denied access to justice merely on hyper technicalities, delay of 39 days in filing the criminal revision is condoned. CRM stands disposed of.

CRR-1509-2012

As they say, “everything is fair in love and war” and this saying aptly applies to present case before this Court.

The marriage took place between Munish Gupta (referred to as the complainant) present petitioner and Sneh Gupta alias Tandon respondent no. 2 on 30.11.2002 which was an outcome of love affair. Out of this marriage a female child Tavisha Gupta was born to the couple on 17.10.2003 (the daughter aged 8 years at the time of registration of the present case). It is during the course of events as is the allegations of the complainant husband that the wife developed extra marital relations with respondent no. 1 while both were working in Indus Hospital, Mohali. It was on 6.8.2011, the complainant discovered that his wife and minor daughter had gone missing from the house and the matter was reported to the police leading to the registration of the present case by way of FIR No. 81 dated 9.8.2011 under Sections 363, 366-A, 120-B IPC, Police Station Mataur, Mohali. In the allegations subject matter of the criminal prosecution the husband has alleged that respondent nos. 1 and 2 kidnapped his minor daughter and after preparing forged passports tried to flee from the country and were apprehended at the Airport on 21.8.2011 and thus, the present case had come about on those allegations. The court of learned Additional Sessions Judge, SAS

Nagar vide impugned order dated 17.11.2011 finding no prima facie case at the time of framing of the charges discharged both the accused and hence the present invocation by way of criminal revision has come about by the husband challenging these orders.

Heard Mr. Sandeep Sharma, Advocate and Mr. Gurinder Singh Dhillon, Advocate, for the petitioner; Mr. Harparteek Singh Sandhu, Advocate, as Legal Aid Counsel for respondent nos. 1 and 2 and Mr. Dhruv Dayal, Sr. DAG, Punjab for the State/respondent no. 3 and perused the records.

The own stand of the two sides and is well reflected from the records is of admission of the marriage between the two sides leading to birth of the girl child who at the time of occurrence admitted was aged around 8 years. Appreciating the submissions of the two sides, a question that needs to be answered if mother can be accused of kidnapping her own minor daughter. It is not the case that a stranger or paramour of the wife respondent no. 1 had kidnapped this minor girl child. To the very question of this Court, the learned counsel for the revisionist fairly concedes that there is no evidence that has come in the investigations to bear out that the child was kidnapped or was being taken out of the country for some immoral purposes. The allegations that respondent no. 2 has prepared forged and fabricated passports could not be substantiated either in the arguments or by any evidence worth credence as

counsel for the petitioner to the very arguments put forth by the counsel for the private respondents that neither any official of the Passport Office nor any expert has been examined to show that the passports so claimed are forged and fabricated documents. Thus the only query that needs to be answered is the very applicability of Sections 363 and 366 IPC. This Court in Single Bench view in **Loveleen Saini alias Loveleen Chaudhary and others vs State of Punjab and another, 2014(1) CrI. CC 652** in a similar situation has held that in such a relationship it cannot be taken that there was any bad intention on the part of the parent of the child and has opined that it was purely out of vengeance due to matrimonial disaccord between the couple one of the spouses has resorted to the remedy by filing a criminal litigation. It is the admission during the course of arguments by the counsel for the petitioner that till date no specific order has been proved on the record having been passed by competent court granting guardianship of this minor girl to any of the spouses and therefore, as has been the preposition answered by the Hon'ble Apex Court in **Chandrakala Menon vs Capt. Vipin Menon, 1993(1) JT 229** holding that the question regarding custody of a minor child cannot be decided on the basis of the legal rights of the parties. The custody of a child has to be decided on the sole and predominant criterion of what would best serve the interest and

welfare of minor child. The court below has placed heavy reliance on the ratio of **Gurdial Kaur vs Dalbir Singh and others, 2007(1) Recent Criminal Reports, 975** to derive home the point that in such a situation parties cannot be made to face criminal prosecution. Thus, to the mind of this Court it would be quite difficult to deprive the mother-respondent no. 2 to forego her right for love and affection for her own minor daughter and therefore, the allegations by the husband certainly do not sustain. Since as the position of law laid down in **Rajendra Rajoriya vs Jagat Narain Thapak & another, 2018(2) JT 471** the revisional powers of the Court are of limited jurisdiction to adjudicate on the legality and propriety of the order or findings. The impugned orders does not appears to suffers from any illegality or perversity and needs to be upheld. The present revision petition being hopelessly without merits stands dismissed.

November 29, 2018

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(Fateh Deep Singh)
Judge

Whether speaking/reasoned ?
Whether Reportable ?

Yes/No
 Yes/No