

\$~44

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 12th July, 2018

+ CRL. M.C. 3428/2018 and Crl.M.A.12446-12447/2018

VISHAL DHAR & ORS. Petitioners
Through: Mr. Bimal Roy Jad, Advocate with
Mr. Sumir Pandita, Advocate

versus

THE STATE (NCT OF DELHI) & ORS. Respondents
Through: Mr. Akshai Malik, APP for the State
with SI Deepak Sharma, PS Vikas
Puri.
Mr. Kundan Kumar, Advocate with
Mr. Ajay Kumar Saini, Adv for R3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. This petition has been preferred invoking the inherent jurisdiction of this court under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) praying for quashing of the first information report (FIR) No.223/2018, registered at Police Station Vikas Puri for offences punishable under Sections 323/326/363/34 of Indian Penal Code, 1860 (IPC). The FIR was registered on 08.06.2018 which, as per the petitioners, is an “abuse of law”.
2. The State as respondent has accepted notice and the SHO of Police Station Vikas Puri has produced the case diary for perusal.

3. The learned counsel for the petitioners has been heard and record has been perused. In the opinion of this court, the petition at hand itself is an abuse of the process of law, the prayer being highly premature and smacking of an attempt to stall the investigative process into the offences which are quite serious in nature, there being no material available on which it could be inferred that the allegations in the FIR are false, baseless, concocted or motivated.

4. The first petitioner concededly was married to the third respondent who is the complainant in the FIR she being a resident of Vikas Puri, New Delhi. It appears that from out of the wedlock, a male child, now aged three years, was born. The marriage of the parties has run into rough weather, the child being in the physical care, custody and control of the mother (the first informant).

5. It appears the FIR No.7/2018 had been registered by Police Station Bakshi Nagar, Jammu for offences punishable under Sections 376/354/506 Ranbir Penal Code (RPC) against the brother-in-law of the third respondent on the allegations that he had molested the minor daughter of the first petitioner. In the wake of the matrimonial dispute, the first petitioner had earlier approached the High Court of Jammu & Kashmir by *Habeas Corpus* petition regarding custody of the minor son of the parties (02/2018) wherein some order was passed on 22.01.2018. But, concededly, the Supreme Court by order dated 12.02.2018 in SLP (Crl.) 1328/2018 stayed the operation of the aforesaid order.

6. In the FIR lodged on 08.06.2018, in the context of which present petition has been filed, the third respondent has alleged that, while she was returning with the child from his school, travelling in a cycle-rickshaw, she was intercepted by the second and third petitioners – they being described as associates of the first petitioners – and that her child was forcibly snatched from her, after the rickshaw puller and she had been incapacitated by use of some chemical spray into their respective eyes.

7. The petitioners state that the third respondent has managed to have the said FIR registered without taking into account that the first petitioner is the biological father of the child to whom the custody had been given by the third respondent after taking an amount of Rs.2 lac from him.

8. It is really strange that the second and third petitioners have joined the first petitioner in filing this petition and thereby making an attempt to endorse his claim as to the lawful custody and control of the child on the relevant date. The offences alleged in the FIR are far too serious and cannot be trivialized, there being no material, as observed earlier, to assume that the allegations made therein by the third respondent are false.

9. A specific role has been attributed in the FIR to the second and third petitioners who, of their own, have no right or claim as to the custody of the child nor there is any averment that they had been duly authorized by the first petitioner to take the child in their control. The matter needs probe.

10. The petition is dismissed in *limine*.
11. Pending applications also stand disposed of.

R.K.GAUBA, J.

JULY 12, 2018/vk

