

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

**CRM M-15884-2019 (O&M)
Date of Decision : 06.05.2019**

Surinder Singh and others

..... Petitioners

Versus

State of Punjab and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present : Mr. S.P.Soi, Advocate
for the petitioners.

RAJ SHEKHAR ATTRI, J. (Oral)

Petitioners Surinder Singh, Balvir Singh, Harnam Singh and Jagdev Singh have preferred the instant petition under Section 482 Cr.P.C. for quashing of FIR No.17 dated 15.03.2011, registered under Sections 363, 506, 148, 149 IPC, at Police Station Mehatpur, District Jalandhar and all subsequent proceedings arising therefrom including challan under Sections 363, 365, 506, 34 IPC.

The sole question arises for determination is as to whether a minor ward can be subject of kidnapping by the father.

It is the case of complainant-respondent No.2 Amarjeet Kaur that she was married with Surinder Singh-petitioner No.1 and from this wedlock minor daughter Gurpreet Kaur, who is about five years old, was born. There was matrimonial dispute between husband and wife, therefore, the complainant-wife alongwith her minor daughter started staying with her father at village Kaimwala. It is alleged that on 15.03.2011 at about 9:00 a.m., the minor daughter of the petitioner was in the school. Petitioner

No.1 in the company of other persons had forcibly kidnapped her and ran away. The school teacher informed the complainant, who lodged the FIR.

I have heard learned counsel for the petitioners and have gone through the record.

Learned counsel for the petitioners has submitted that the father cannot be responsible for taking away his ward. In support of his contention, he has placed reliance upon the judgment of Hon'ble Supreme Court in **Chandrakala Menon vs. Capt. Vipin Menon 1993 (2) RCR (Criminal) 5.**

I have given my thoughtful consideration to the rival contention.

The Hon'ble Supreme Court in ***State of Haryana and others versus Ch. Bhajan Lal Ors.*** has made the following observations:-

“In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Whether the allegations made in the First Information Report or the complaint, even if they

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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.

- 2. 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.*
- 3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
- 4. Whether, the allegations in the F.I.R. 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.*
- 5. Where the allegations made in the F.I.R. 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.*
- 6. 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*

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concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. 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.”

In this case, the complainant-wife alongwith her daughter was thrown away from her matrimonial home, therefore, they started residing with the father of the complainant at village Kaimwala. The minor daughter was attending the school is a matter of routine. On the day of incident at about 11:00 a.m. she was forcibly kidnapped by petitioner No.1 and his associates as parties were at daggers drawn. It was the duty of the petitioner No.1-father to seek permission of the complainant-mother for taking away his child from the school but he forcibly took away the custody of the minor child by entering into the school.

The allegations levelled against the petitioner are subject to evidence. However, at this stage, it cannot be observed that the allegations levelled against the petitioner in the FIR are frivolous or without any substance.

As such, finding no ground to quash the aforesaid FIR, the instant petition stands dismissed.

**(RAJ SHEKHAR ATTRI)
JUDGE**

06.05.2019
mamta

Whether speaking/reasoned
Whether Reportable :

Yes/No
Yes/No