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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 27th February, 2019

+ CRL. M.C. 2681/2016 & Crl.M.A. 11481/2016

MINNI CHAUDHARY

..... Petitioner

Through: Mr. Medhanshu Tripathi, Adv.

versus

IQBAL SINGH @ IQBAL AHMED

..... Respondent

Through: Mr. Anupam S. Sharma, Mr.
Prakarsh Airan & Mr. Apoorva
Ahuja, Advs.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner was married to the respondent on 01.01.1993 and gave birth to a daughter on 01.11.1995, the child being named Divyanshi. It has been the case of the petitioner that she separated from the respondent sometime in June, 2001, the child having continued to be in her custody. It is alleged by her that on 15.08.2013, the respondents driver had taken the girl to market, but instead took her out of her guardianship she being sent away to Dubai. It is against this backdrop that she claims to have visited the office of the respondent on 15.08.2013. She filed a criminal complaint on 19.12.2013 alleging offences punishable under Sections 323/361/363/506/120-B of Indian Penal Code, 1860 (IPC) having been committed by the respondent. Her request for direction to the

police for registration of the case and investigation under Section 156 (3) of Code of Criminal Procedure, 1973 (Cr.P.C) was declined and instead a preliminary inquiry was held in which she led evidence under Section 200/202 Cr.P.C.

2. The Metropolitan Magistrate considered the said evidence and by order dated 25.03.2015 issued process against the respondent finding grounds to proceed against him on accusations of offences under Section 506/323 IPC, while declining to take any action on the charge of kidnapping of the daughter, then 17 year old, for the reason that the respondent is the natural father. The petitioner concededly would not press the complaint to that extent on that score any further.

3. The respondent challenged the summoning order before the court of Sessions by Crl. Rev.121/2015. By order dated 05.04.2016, the revisional court found the Metropolitan Magistrate to be in error. It concluded, on scrutiny of the evidence led during preliminary inquiry that no *prima facie* case was made out, there being no sufficient grounds to proceed against the respondent and, thus, set aside the order of the Metropolitan Magistrate, thereby bringing an end to the criminal complaint.

4. The above-mentioned order of the revisional court is challenged by the petition at hand under Section 482 Cr.P.C.

5. The revisional court has noted in the impugned order the crucial part of material adduced during pre-summoning inquiry, thus:-

“12. Respondent No.2/complainant has filed alongwith her complaint under Section 200 Cr.P.C., copy of various complaints written by her to police against petitioner. Alleged incident of the night of 15.08.2013 regarding abuse,

manhandle, injuries and attempt to throttle does not find place in complaint dated 15.08.2013 or 16.08.2013. In her complaint dated 16.08.2013 written to the Police Commissioner, she has alleged about misbehave by the brother of the petitioner in the Court complex on 03.11.2012, but she has not alleged a single word about any incident in the night of 15.08.2013 committed by her husband at Mundka house. She has stated that she visited her husband's Mundka residence and therefrom she called in police station and police staff supported by her very much. In this complaint she has not stated anything about mishandling, injuries or attempt to throttle by her husband.

13. In her pre-summoning evidence the respondent no.2 has deposed before Ld. Trial Court that on the next day i.e. on 16.08.2013, she lodged a complaint to Commissioner of Police, ITO, Delhi as Ex.CW1/B. On the next day i.e. on 17.08.2013, she again visited Police Post, Sector-1, Dwarka and gave a complaint Ex.CW1/C and after that she personally met Joint CP Mr. Ojha in his office and told him about the whole incident. He assured her and sent her to SHO, Sector-9, Dwarka and a written detail complaint Ex.CW1/D was filed by her”.

6. Indeed, the complaints lodged on 15.08.2013 and 16.08.2013 are conspicuously silent about any physical assault being committed or hurt caused or any act constituting criminal intimidation being indulged in by the respondent on the night of 15.08.2013. The focus of the petitioner in the said two complaints, submitted one after other, was on the fact that her daughter had been taken away, out of her custody and control. There is not a whisper of allegation of the respondent having subjected her to any physical hurt or having extended any threats. The allegations appearing in the complaint lodged on 17.08.2013 were clearly an afterthought in the nature of

improvement. The revisional court was right in its scrutiny and reaching the conclusion that such improvements, without any explanation for the earlier omission, cannot become a ground for criminal action in the nature of issuance of process under Section 204 Cr.P.C.

7. The petition and the application filed therewith are dismissed.

FEBRUARY 27, 2019

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R.K.GAUBA, J.

