

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

CRM-M-38095-2019

Date of decision: December 03, 2021

Rajender Gupta

....Petitioner

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Sanjiv Gupta, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

Mr. Raja Bahadur Singh Jain, Advocate
for respondent No.2.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for quashing of the FIR No.208 dated 16.10.2018 under Sections 365, 341, 506 IPC, registered at Police Station Mataur, District SAS Nagar, Mohali and also the subsequent proceedings arising therefrom.

Brief facts of the case are that the FIR was registered on the statement of Prem Chand (father-in-law of the petitioner) with the allegations that the marriage of his elder daughter Meenu Gupta was solemnized with petitioner Rajender Gupta about 18 years ago. Out of this wedlock, two children were born, a daughter, named Riya Gupta aged about 15 years and a son Riyansh Gupta aged about 09 years. The matrimonial

dispute is going on between his son-in-law-petitioner Rajender Gupta and his daughter Meenu Gupta. About 14 years ago, petitioner-Rajender Gupta has taken his daughter Riya Gupta. On 15.10.2018, the petitioner has even forcible taken the custody of son Riyansh Gupta from Shemrock School, Sector 69, Mohali and with that allegations the FIR was registered seeking illegal action against the petitioner, who had forcibly taken away his grandson Riyansh.

In the present petition, counsel for the petitioner has prayed for quashing of the above-mentioned FIR on the following grounds :-

- (a) The marriage between petitioner-RajenderGupta and Meenu Gupta, daughter of the complainant was solemnize on 2.3.2002. The minor daughter Riya Gupta is in the custody of the petitioner and is being taken care of her studies by him. It is further stated that the wife of the petitioner or the complainant never wanted the custody of both the minor children. Rather, on 13.10.2018, it is complainant-Prem Chand, who has called the petitioner to take the custody of his son Riyansh Gupta.
- (b) The petitioner is capable of taking care of, upbringing, maintenance and education of both the children and therefore, the custody of Riyansh Gupta with the

petitioner is not illegal and he being the father, is the natural guardian.

- (c) Counsel for the petitioner submitted that even a petition has been filed under the Guardian and Wards Act in this regard, in which the complainant has demanded Rs.70,00,000/- to part away with from his wife Meenu Gupta.
- (d) Counsel for the petitioner further submitted that from no point, the custody of Riyance Gupta can be illegal as stated in the FIR. It is also stated that son of the complainant is involved in FIR No.46 dated 23.1.2019 under Sections 376/506 IPC, Police Station Mukherji Nagar, New Delhi and they were extending threats to the prosecutrix in the said case and, therefore, the petitioner has taken the custody of both the children so that no adverse inference is drawn on them as they are of tender age.
- (e) Counsel for the petitioner has submitted that a bare perusal of Section 365 IPC shows that neither the offence of kidnapping nor abduction is made out, as the petitioner is the father of Riyansh Gupta and similarly Section 341 IPC is also not made out as there

is no wrongful restraint over the children, who are residing with the petitioner.

- (g) Counsel for the petitioner further submitted that the daughter of the petitioner Riya Gupta has attained the age of 18 years and she is being properly taken care of by the petitioner and she is pursuing her studies in a proper manner.
- (f) Counsel for the petitioner has relied upon 1993(2) RCR (Criminal) 5, Chandrakala Menon Vs. Capt. Vipin Menon, to submit that it has been upheld by the Supreme Court that where the father has the custody of the minor child, the offence under Section 366 IPC is not made out.
- (g) Counsel has also relied upon 2007(1) RCR (Criminal) 990, Sehnaz @ Santosh Gupta Vs State of Punjab and another, wherein relying upon judgment of Hon'ble the Supreme Court in Chandrakala Menon's case (supra), it is held that the mother or the natural parents cannot be held guilty of offence of kidnapping of his/her own child.
- (h) Counsel for the petitioner has also relied upon 2005(2) RCR (Civil) 578, Rajesh K. Gupta; Vs. Ram Gopal Agarwala and others, to submit that where the husband

and wife are living separately, the paramount consideration is the welfare of the child and not the legal rights of either of the parties and, therefore, the custody of the petitioner cannot be held to be illegal.

Reply by way of affidavit of DSP, City-1, SAS Nagar Mohali is on record. As per the same, the custody of Riyansh Gupta has been taken forcibly by the petitioner and a fair investigation in the matter is carried out. It is further submitted that the petitioner has not joined the investigation as there was a direction in CRWP-880-2018 and CRM-M-18309-2019 that no coercive action be against petitioner. It is also submitted that during the pendency of the aforesaid two petitions, on 30.9.2019 both the children came present before this Court where an interaction sessions was held with both children Riya Gupta, aged about 16 years and Riyansh Gupta 10 years and they had not stated anything against their father-petitioner. The affidavit also speaks about certain other petitions filed by both parties against each other.

Counsel appearing for respondent No.2 has filed separate reply and has contested the case on the ground that the petitioner is playing hide and seek as he has filed a divorce petition at SAS Nagar, Mohali and the same was dismissed for non-prosecution and order of maintenance was passed. The application for restoration of the same is still pending. Counsel further submits that there is no adjudication by the competent Court granting a right to the petitioner to keep the custody of minor son Riyansh Gupta. It

is also submitted that the matter was referred before the Mediation and Conciliation Centre, where the petitioner has not reconciled the things.

Counsel for the complainant has further submitted that his, i.e. Meenu Gupta-wife of the petitioner was paying the fee of Riyansh Gupta, who was studying in Shemrock School, Mohali and from where the petitioner has forcibly and illegally taken the custody of Riyansh Gupta. Counsel for the petitioner further submits that a petition filed by the petitioner under Sections 7 and 8 of the Guardian and Wards Act for appointing the petitioner as a guardian of minor Riyansh Gupta is pending and, therefore, he has not been declared a guardian of Riyansh Gupta, the minor son.

Counsel for the complainant has produced the judgment of Delhi High Court, wherein the son of the complainant Mohit Aggarwal was granted the concession of bail in aforesaid FIR No.46.

Counsel for the complainant has further relied upon a judgment dated 25.11.2008 passed by this Court in CRWP-543-2008 titled Gippy Arora Vs State of Punjab and others, to submit that the custody of 11 months old child taken by the father in a fraudulent manner was held to be illegal and the same was restored. Reliance has also been placed on a judgment dated 3.11.2020 passed by this Court in Mandeep Kaur Vs. State of Punjab and others, wherein it is held that the consideration of welfare of the minor child is the paramount consideration, irrespective of legal rights of the parents.

In reply, the learned counsel for the petitioner has submitted that the child is in the custody of the petitioner since 2018 and is presently aged about 13 years. Counsel for the petitioner has further submitted that the complainant-father-in-law has no *locus standi* to register the present FIR as the mother of the child Meenu Gupta has never come forward to register the FIR. It is also submitted that though a *habeas corpus* petition, i.e. CRWP-880-2018 has been filed by the wife of the petitioner seeking custody of the minor son Riyansh Gupta, however, there is no allegation that the petitioner has committed any offence under Sections 365 and 341 IPC.

After hearing the counsel for the parties, I find merit in the present petition on the following reasons :-

- (i) The complainant in this case is Prem Chand, father-in-law of the petitioner and the allegations are that the petitioner has illegally taken the custody of minor son Riyansh Gupta from the school premises but no such complaint was given by mother-Meenu Gupta.
- (ii) In view of the judgment of the Hon'ble Supreme Court in Chandrakala Menon's case (*supra*) and relied upon by this Court in Sehnaz @ Santosh Gupta's case (*supra*), the petitioner is father and the natural guardian of 09 years old child at the time of the alleged occurrence, cannot be held to commit offence under Sections 365 IPC or 341 IPC

- (iii) The dispute between the parties is pending under the Guardian and Wards Act before the competent Court of law and in the intervening period, the minor daughter Riya Gupta, qua whom there is no dispute from the complainant or his daughter, the wife of the petitioner regarding custody, who has attained the age of majority and since the time when both the parents separated, she had resided in the care and custody of the petitioner, who has provided her education in a boarding school at Dehradun and now providing her further higher education and, therefore, it is not the case of the complainant that either she is not being provided proper education or upbringing by the petitioner.

The arguments raised by the counsel for the petitioner are that on the basis of the judgment of the Gippy Arora's case (*supra*) is not applicable as the child in the said case was below 05 years of age, whereas in the present case, the age of the child was around 09 years and for the last three years he is residing under the care and custody of the petitioner, being his father.

Keeping in view the peculiar facts and circumstances of the case, this Court is of the view that the FIR is nothing but the misuse of the process of law.

Accordingly, this petition is allowed and the FIR No.208 dated 16.10.2018 under Sections 365, 341, 506 IPC, registered at Police Station Mataur, District SAS Nagar, Mohali is, hereby, quashed and all subsequent proceedings arising therefrom are set aside.

December 03, 2021
satish

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No