

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 4634 OF 2015

Nithya Vasanthakumar	...Petitioner
vs.	
The State of Maharashtra and Ors.	...Respondents

Mr. Kayval P. Shah - Advocate for the Petitioner
Mr. R. Narayanan - Advocate for the Respondent No. 2
Mr. K. V. Saste – APP for the Respondent - State

CORAM :	PRASANNA B. VARALE & S. M. MODAK, JJ.
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DATE :	06th MAY, 2022
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P. C. (Per S. M. Modak, J.) :-

. Heard the learned counsel for the Petitioner and learned counsel for the Respondent No. 2 – first informant and learned APP for the Respondent-State.

2. The Respondent Nos. 2 and 3 were wife and husband. Whereas the Petitioner is the sister of Respondent No. 3. There is allegation that she has kidnapped minor daughter of Respondent Nos. 2 and 3 on 03/10/2014. It was from the house of Respondent No. 2 at Leela Kunj Building, Matunga, Mumbai. Initially offence was registered against the unknown person under Section 363 of the Indian Penal Code. During the investigation it was revealed that minor daughter ‘Kanishka’ is with the

Petitioner and Respondent No. 3. Accordingly, the police was arrested the Petitioner so also custody of Kanishka handedover to the Respondent No. 2. There was matrimonial dispute pending in between the Respondent Nos. 2 and 3. The case of the Petitioner is that the minor daughter Kanishka accompanied her on her own with Respondent No. 3. Hence this Petition is filed initially for quashing on the basis of the merits.

3. In the meantime, the Respondent Nos. 2 and 3 have settled their matrimonial dispute and they have decided to dissolve the marriage. The marriage Petition A-2417 of 2016 is pending in Bandra Family Court. Both the parties have given evidence before the Family Court and yet final Order to be passed. As per the settlement the custody of the Kanishka will continue with the Respondent No. 2 – Mother. Today Respondent No. 2 is present with her daughter by virtual mode. She has admitted by filing of divorce Petition and execution of the settlement. Respondent No. 2 is also consented for quashing of the F.I.R. Consent terms are executed and copy is filed on record.

4. As the instance is taken place on the background of matrimonial dispute and as spouse have resolved that dispute, we are inclined to quash the F.I.R. and in view of that following Order is passed:-

ORDER

(i) Writ Petition No. 4634 of 2015 is allowed.

(ii) The charge-sheet is filed in the Court of 30th Metropolitan

Magistrate Kurla for the offence under Section 363 arising out of F.I.R. Crime No. 291 of 2014 is quashed and set aside.

(S. M. MODAK, J.)

(PRASANNA B. VARALE, J.)