



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.337 OF 2024

- 1) Faizaan Ahmed Chisti,
Age-37 years, Occu:Business,
R/o-Pradhan Naampali,
Hyderabad, Telengana,
- 2) Majhid Sohebbhai Maisuri,
Age-57 years, Occu:Business,
R/o-Erakunda Road, Petrol Pump R.R.,
Hyderabad, Telengana.

...APPLICANTS

VERSUS

- 1) The State of Maharashtra,
Through Police Inspector,
Rahuri, District-Ahmednagar,
- 2) Nisaar Hasan Pathan,
Age-40 years, Occu:Business,
Kolsa Vastu Gruh Paat,
Taluka-Rahuri, District-Ahmednagar.

...RESPONDENTS

...
Mr. R.R. Deshpande Advocate h/f. Ms. Priyanka R.
Deshpande Advocate for Applicants.
Ms. R.P. Gour, A.P.P. for Respondent No.1-State.
Ms. Sunita G. Sonawane Advocate for Respondent No.2.
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CORAM: SMT. VIBHA KANKANWADI AND
SANJAY A. DESHMUKH, JJ.

DATE : 11th AUGUST, 2025

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Application has been filed, initially for quashing the First Information Report (for short "the FIR") vide Crime No. 1290 of 2023, registered with Rahuri Police Station, Taluka-Rahuri, District-Ahmednagar, on 17th November 2023, for the offence punishable under Sections 363, 323, 504, 506 and 507 of the Indian Penal Code, and later on by way of amendment, for quashing the Charge-sheet i.e. the proceedings in R.C.C. No.276 of 2024, pending before the learned Judicial Magistrate First Class, Rahuri, District-Ahmednagar.

2. Heard learned Advocate Mr. R.R. Deshpande holding for learned Advocate Ms. Priyanka Deshpande for the applicants, learned APP Ms. R.P. Gour for respondent No.1 and learned Advocate Ms. Sunita Sonawane for respondent No.2.

3. Learned Advocate for the applicants submits that the informant is 40 years old person and it is stated that he was kidnapped. In fact, out of the offences under which the charge-sheet has been filed, only Section 363 of the Indian Penal Code is the cognizable offence. Rest are non-cognizable offences. For proving an offence under Section 363 of the Indian Penal

Code, we will have to consider the definition of 'kidnapping' under Section 359 of the Indian Penal Code, which states that kidnapping is of two kinds; one is kidnapping from India and another is kidnapping from lawful guardianship. Section 360 of the Indian Penal Code covers kidnapping from India, wherein the person should be taken out of India without his consent and Section 361 of the Indian Penal Code provides for kidnapping from lawful guardianship. A minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, is taken away or kept away from the lawful guardianship, then it would fall under this category. The informant is not a minor and he was not taken out of India and therefore, Section 363 of the Indian Penal Code will not be attracted. The applicants are residents of Hyderabad and they are businessmen. They had no connection with Rahuri in the form of commercial transactions. Further, the contents of the FIR would show that the cousin brother of the informant was plying taxi from Shirdi to Shani Shinganapur. The said cousin brother came in contact with applicant No.1 and therefore, they were knowing each other. On the request of the informant, the applicants had provided some financial assistance for the purpose of improvement in the business of the informant. Now,

the informant has no intention to return/repay the said amount and therefore, false allegations have been made. It would be an abuse of process of law if the applicants are asked to face the trial.

4. Per contra, learned APP as well as learned Advocate for respondent No.2 strongly opposed the Application and learned APP strongly submitted that even if it can be said that the offence under Section 363 of the Indian Penal Code is not made out, yet the offence is certainly made out punishable under Section 364 of the Indian Penal Code. Learned APP and learned Advocate for respondent No.2 have submitted that all the details, as to how the informant was abducted, have been given in the FIR and those are supported by the statements of neighbouring persons. Therefore, this is not a fit case where the powers can be exercised by this Court under Section 482 of the Code of Criminal Procedure.

5. At the outset, we would like to say that mentioning of the wrong section by the investigating agency in the charge-sheet will not give any advantage to the accused. Whatever sections are quoted in the FIR or the charge-sheet, will not stop or

restrict the powers of the learned Magistrate or this Court from taking cognizance of the offences and the matter, as the case may be. We would go further and say that if the facts and the material in investigation reveals that some more offences are transpired, then certainly the learned Magistrate would be justified in taking cognizance of the offence under the added Sections though those might not have been quoted by the investigating officer.

6. From the contents of the FIR and the charge-sheet it can be seen that certainly the informant is a major person, he was not taken out of India and was not taken away from the guardianship and therefore, Section 363 of the Indian Penal Code will not get attracted. However, Section 362 of the Indian Penal Code defines 'abduction'. It is stated that whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person. Section 364 of the Indian Penal Code makes provision for punishment if such abduction is in order to commit murder of that person or may be so disposed of as to be put in danger of being murdered. Section 364-A of the Indian Penal Code provides punishment for kidnapping or abducting any person for ransom.

7. Now, the facts in the present matter are that the informant runs a toy shop at Kolhar Budruk. His factory of manufacturing toys is on Tambhere road. His cousin brother Aamir used to ply taxi between Shirdi to Shani Shinganapur and he came to know accused No.1, who is from Naampali, Hyderabad. It is stated that applicant No.1 wanted to purchase a plot at Shirdi. The cousin brother has then introduced applicant No.1 to the informant. The informant had then shown a plot at Shirdi to applicant No.1 but he had not purchased it. Thereafter, about three years prior to the FIR, the informant had taken an amount of Rs.50,00,000/- from applicant No.1 on the interest at the rate of 3%, for the purpose of his company and according to the informant, he has repaid the principal amount as well as interest to the extent of Rs.45,00,000/- to applicant No.1. Around 3.00 p.m., on 8th November 2023, the applicants went to the house of the informant in a white coloured Fortuner Car bearing No.AP-22-AG-0666. They abused the informant, forced him to sit in the Car. They were resisted by the wife and mother of the informant, however, wife and mother were assaulted. When informant asked them as to why they were taking him along with them, it was told to him that he will not be allowed to go till he

repays the entire amount. He was taken towards Shirdi and in the midway he was assaulted and then the Car was stopped near Reddy Hotel, Shirdi, where they gave him tea to drink and then gave threats that he should repay the amount or otherwise he would be involved in false case. Informant says that somehow by request with folded hands, he got himself rescued. However, thereafter also on phone the applicants had given threat to him stating that if he does not pay the rest of the amount, he would be killed. Taking into consideration this story, certainly it can be said that it was for ransom.

8. Section 365 of the Indian Penal Code provides that whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, then he would be liable for imprisonment. Thus, it can be said that the facts of the case would give rise to the offence under Section 364-A or Section 365 of the Indian Penal Code. The FIR is supported by the statements of wife and mother of the informant. Another witness Aasif Rehman Sayyad is related to the informant and he states that he was present in the house of the informant as he had come there for some work. Witness Nitin Sanjay Ohol states that around 3.30 p.m., on 8th November 2023, he heard the

voice of quarrel in the neighbourhood and therefore, he came out. He found that two persons were taking the informant forcibly in the Fortuner Car. The wife and the mother of the informant were resisting them but by manhandling and then assaulting them, the informant was taken away. Thus, there appears to be prima facie evidence to show the cognizable offence and therefore, this is not a fit case where we should exercise our inherent powers under Section 482 of the Code of Criminal Procedure.

9. The Application stands rejected.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/AUG25