



IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2273 OF 2024

1. Gaurav Prabhakar Malwal,
Age : 31 Years, Occu. : Business,
R/o. Ashwain Nagar,
Opposite Ambad Police Station,
R/o. Nashik, Tq. & Dist. Nashik.
2. Dipak Prabhakar Malwal,
Age : 27 Years, Occu. : Business,
R/o. Aswhwain Nagar,
Opposite Ambad Police Station,
R/o. Nashik, Tq. & Dist. Nashik.

.... Applicants

VERSUS

1. The State of Maharashtra
Through Investigating Officer,
Police Station Osmanpura,
Aurangabad, Tq. & Dist. Aurangabad.
2. Brarakha Sanjay Kundalwal ,
Age : 29 Years, Occu. : Private Service,
R/o. Ajinkya Palace, Bansilal Nagar,
Ranjannagar, MIDC Railway Station,
Aurangabad, Tq. & Dist. Aurangabad.

.... Respondents

....

Advocate for Applicants : Mr. Abhijeet T. Witore and Mr. Shaikh R. Abid

APP for Respondent No.1-State : Mr. G.A. Kulkarni

Advocate for Respondent No.2 : Mr. Shaikh Nayyim S. and
Mr. Yogesh A. Jadhav

....

CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.

Dated : 28th July 2025

ORDER [PER SANJAY A. DESHMUKH, J.] :-

1. Heard learned Advocate for both sides as well as learned APP for the State.

2. This is an application for quashing the First Information Report (hereinafter referred to as “the FIR”) and charge-sheet in R.C.C. No.231 of 2023, under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “the Cr.P.C.”), pending before the learned Judicial Magistrate First Class, Aurangabad, arising out of Crime bearing No.0172 of 2022, registered with Osmanpura Police Station, Aurangabad, dated 27.07.2022, for the offences punishable under Sections 363, 341, 201 read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as “the IPC”).

3. Learned Advocate for the applicants pointed out the report dated 27.07.2022, in which respondent No.2/informant averred that she married with applicant No.1 in the year 2013. She begot a son viz. Swaraj. As there was marital discord between her and her husband, a divorce petition was filed and it is pending before the court. The court has granted custody of Swaraj to her and therefore, she is residing along with son Swaraj at her parents house. On

27.07.2022, at 09.15 a.m., Swaraj was proceeding to the school by Fortuner Car, which was driving by one Subhash Karpe. At 09.24 a.m., Driver Karpe made a phone call to her father and informed that, opposite side of Indian Gas, Usmanpura, one i-10 car overtook his car and stopped before his vehicle. The applicants took out the driver out of the car and applicant No.2 snatched Swaraj from the Car. The applicants put Swaraj in their car and kidnapped him. Therefore, she immediately lodged the report against the applicants.

4. Learned Advocate for the applicants submitted that the applicants are falsely implicated in the crime. General and vague allegations are made against the applicants. The matter has been compromised and the divorce proceeding bearing petition No.A-91 of 2021, has been concluded and marriage has been dissolved. The essential ingredients of offences punishable under Sections 363, 341 and 201 of the I.P.C. are not established against the applicants. If they are compelled to face the trial, it would certainly be an abuse of the process of the Court. It is lastly prayed that the application may kindly be allowed.

5. Learned APP for the State strongly opposed the application and submitted that there is strong evidence against the

applicants that they kidnapped the son of the informant. Their names are mentioned in the F.I.R. There is material on record against the applicants to proceed further with the trial. It is lastly prayed to reject the application.

6. Learned Advocate for respondent No.2/informant submitted that the matter has been settled out of the Court between the informant and applicants. Hence, he prayed that an appropriate order may be passed.

7. In the context of this case, it would be relevant to refer the following authorities :

i) ***Mohammad Wajid and Another Vs. State of U.P. and Another, reported in 2023 SCC Online SC 951; 2023 INSC 683,*** wherein the Hon'ble Supreme Court has laid down the law as follows :-

“34 it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over

and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation....”

8. We have perused the charge-sheet, particularly the report and statements of witnesses. Considering the admitted fact that the settlement has been effected and Swaraj is given in the custody of the informant, they have no such interest in proceeding further with the case. To establish the essential ingredients of Section 363 of IPC, there must be evidence of kidnapping the Swaraj from the lawful guardianship as per Section 361 of IPC. However, there is exception to Section 361 of IPC that this section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose. Such immoral or unlawful purpose is not establishing against the applicants that they kidnapped Swaraj with that intention.

9. As far as wrongfully restrained to the vehicle of the driver by which Swaraj was proceeding to the school is concerned, as per Section 339 of IPC, of which the essential ingredients are that, whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said to restrain wrongfully that person. As stated above, the applicants did not commit the offence of Section 363 of IPC, as they had not kidnapped swaraj for immoral or unlawful purpose. Therefore, the essential ingredients of Section 341 of IPC are not established against the applicants.

10. Considering the facts of the case, particularly the matter has been settled out of court, law laid down in the authorities and reasons, we are inclined to exercise our powers under Section 482 of the Cr.P.C. to quash the report and charge-sheet in the interest of justice to prevent the abuse of the process of the Court against the applicants. The application deserves to be allowed. Hence, the following order.

ORDER

I) The application is allowed.

- II) The First Information Report and charge-sheet in R.C.C. No.231 of 2023, pending before the learned Judicial Magistrate First Class, Aurangabad, arising out of Crime bearing No.0172 of 2022, registered with Osmanpura Police Station, Aurangabad, dated 27.07.2022, for the offences punishable under Sections 363, 341, 201 read with Section 34 of the Indian Penal Code, 1860 stands quashed against the applicants.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asd