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Crl.RC.No.2151 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2026

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.RC.No.2151 of 2023 and
Crl.MP.No.19515 of 2023

1.Naresh Rathod
2.Jitendra Kumar

... Petitioners

Vs.

Tarun Rathod

... Respondent

Prayer: Criminal Revision Case filed under Section 397 & 401 of Cr.P.C. praying to set aside the order passed in Crl.MP.No.29525 of 2023 in CC.No.1129 of 2021 dated 20.10.2023 on the file of the learned II Metropolitan Magistrate, Egmore, Chennai as illegal, unjust in the eyes of Law and allow the discharge petition Crl.MP.No.29525 of 2023 in CC.No.1129 of 2021.

For Petitioners : Mr.P.Kabilan

For Respondent : No appearance

ORDER

This criminal revision case has been filed against the dismissal order passed in Crl.MP.No.29525 of 2023 in CC.No.1129 of 2021 dated 20.10.2023 on the file of the learned II Metropolitan Magistrate, Egmore, Chennai, thereby dismissing the petition filed for

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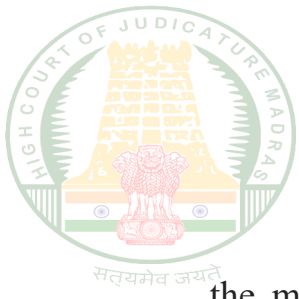


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discharge under Section 245 of Cr.P.C.

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2. The petitioners are the relatives of the respondent's wife. The respondent had misunderstanding with his wife and they got separated. Due to their wedlock, they had given birth to a male child. According to the respondent, the child was in his custody and he was studying in a school. The respondent filed suit in OS.No.343 of 2019 for injunction to restrain his wife from taking custody of their son except due process of law on the file of the III Additional Family Court, Chennai. While pending the suit, the trial court directed the respondent to produce the child before the Family Court. However, on 21.01.2020, when the respondent was to take the minor child to produce before the Family Court, the petitioners kidnapped the child wrongfully restraining his father. Immediately, the respondent lodged complaint before the jurisdictional Inspector of Police and there was no action taken against the petitioners. Therefore, the respondent's father also lodged complaint before G3, Kilpauk Police Station, Chennai. However, no action was taken and as such, the respondent filed private complaint and the same has been taken cognizance by the trial court for the offence punishable under Sections 323, 363 of IPC r/w Section 34 of IPC.



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3. Heard, the learned counsel for the petitioners and perused all the materials placed before this Court. It is found that the respondent refused to receive notice, therefore it would amount to completion of service of notice. Even when the matter is called today, no one on behalf of the respondent has appeared before this Court either in person or through pleader.

4. On perusal of records and also on the submissions of the learned counsel for the petitioners, it is revealed that admittedly the respondent got married his wife and gave birth to a male child. Therefore, they got separated due to misunderstanding between them and his wife is now living separately. The respondent had apprehended that the minor child would be kidnapped by his wife and as such, he filed suit in OS.No.343 of 2019 on the file of the III Additional Family Court, Chennai for injunction restraining his wife from taking custody of their minor son except due process of law. While pending the suit, when the respondent's father was to take the male child to produce before the trial court, the petitioners allegedly kidnapped the child and handed over to the respondent's wife. Now the child is in the custody of the respondent. Further, in the suit filed by the respondent, injunction was granted and it was challenged upto Hon'ble Supreme Court of India and the petitioners

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were granted only visitation right in respect of the child, in the house of

the respondent's wife. When the child was taken back by his own mother,

it would not amount to kidnapping. In fact on the date of the alleged

occurrence, the wife of the respondent was very much present in the

school where the minor child was studying. After seeing his mother

outside his school gate, the minor child ran to his mother naturally.

Therefore, the respondent's father who came to pick the child created

altercation, but the wife of the respondent took the child back and

immediately left the place and went back to her house. Therefore, no

ingredients are available to attract the offence under Sections 323, 363 of

IPC r/w Section 34 of IPC. Therefore, on the complaint lodged by the

respondent's father, the jurisdictional police rightly did not take any

action since no offence is made out. When the natural guardian took the

child, it cannot be construed as kidnapping. Therefore, the entire

proceedings is nothing but clear abuse of process of law and the same

cannot be sustained.

5. In view of the above discussion, this criminal revision case is allowed and the order passed in Crl.MP.No.29525 of 2023 in CC.No.1129 of 2021 dated 20.10.2023 on the file of the learned II Metropolitan Magistrate, Egmore, Chennai, is set aside. The petitioners

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are discharged from all the charges under Sections 323, 363 of IPC r/w

Section 34 of IPC. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To

The learned II Metropolitan Magistrate, Egmore, Chennai

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