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**(2013) 09 P&H CK 0367**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Criminal Miscellaneous No. M-33627 of 2011 (O and M)

Swatantar Bala and Another

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

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**Date of Decision:** Sept. 19, 2013

**Hon'ble Judges:** Sabina, J

**Bench:** Single Bench

**Advocate:** Subhash Chander, for Mr. Vaibhav Narang, for the Appellant; Deep Singh, DAG Punjab and Ms. Satwant Mehta, Advocate, for the Respondent

**Final Decision:** Allowed

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**Judgement**

Sabina, J.

Petitioners have preferred this petition u/s 482 of the Code of Criminal Procedure, 1973 for quashing of FIR No. 268 dated 8.8.2011 (Annexure P-1) u/s 363, 120-B of the Indian Penal Code, 1860 (IPC for short) registered at Police Station Civil Lines, District Amritsar City and all the subsequent proceedings arising therefrom. Learned counsel for the petitioners has submitted that petitioner No. 1 and respondent No. 2 had got married on 19.10.1988.

2. Relations between them became strained in the year 1992. Petitioner No. 1 and respondent No. 2 had adopted a child. However, the relations between them could not improve despite adoption of the child. Matrimonial litigation is pending between the parties. Due to this reason, by leveling false allegations against the petitioners, FIR in question had been lodged by respondent No. 2 to pressurise petitioner No. 1 with regard to the litigation lodged by her against respondent No. 2. Divorce proceedings were pending between the parties. Case with regard to custody of the child was also pending between the parties.

3. Learned counsel for respondent No. 2, on the other hand, has vehemently opposed the petition and has submitted that petitioners had tried to kidnap the child in the court premises and had manhandled respondent No. 2. Hence, the

criminal proceedings were liable to continue against the petitioners.

4. Learned State counsel, on the other hand, has opposed the petition.

5. Prosecution story, in brief, is that on 16.10.2010, respondent No. 2 had brought the minor child along with him to the guardian court. After the court proceedings, when respondent No. 2 was standing in the office of his lawyer, petitioners came there. Petitioner No. 1 slapped Prem Singh. When respondent No. 2 tried to intervene, petitioner No. 1 pulled off his turban and caught hold of his beard in open street, where lot of persons had gathered. Petitioners tried to kidnap the minor child. Petitioner No. 1 took away the turban of respondent No. 2 and snatched his wrist watch.

6. In the case of [State of Haryana and others Vs. Ch. Bhajan Lal and others](#), the Apex Court has held as under:-

The following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers u/s 482, Cr.P.C. Can be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:-

(1) Where the allegations made in the first information report or the complainant/respondent No. 2, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a Police Officer without an order of Magistrate as contemplated u/s 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the

institution and continuance of the proceedings and/or where there is specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceedings is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.

7. In the present case, admittedly, petitioner No. 1 and respondent No. 2 got married on 19.10.1988. No child was born to them out of the said wedlock and they adopted a child. However, there is matrimonial dispute between the parties. Consequently, lot of litigation is pending between the parties qua their matrimonial dispute. Divorce proceedings are also pending between petitioner No. 1 and respondent No. 2. Parties are also having dispute qua the custody of the child. In fact, the alleged incident had occurred on the day when the hearing of the case was fixed in the custody case.

8. Annexure P-4 is the petition filed by petitioner No. 1 against respondent No. 2 and his relatives u/s 12 of the Protection of Women from Domestic Violence Act, 2005. The said petition was filed in the year 2008. Annexure P-6 is the petition filed by petitioner No. 1 seeking custody of the minor child aged four years against respondent No. 2. The said petition was filed in the year 2009. Annexure P-7 is the copy of the order dated 7.5.2009 passed in COCP No. 533 of 2009 filed by petitioner No. 1 against respondent No. 2 and others. The said order reads as under-

Learned counsel for the respondent has produced certified copy of the order dated 2.5.2009 passed by Duty Magistrate/JMIC Amritsar wherein it stands mentioned that child Amritsar Singh was produced before the said Court by Daljit Singh.

Respondent No. 1 is present in person. He states that he shall produce the minor child on each and every date before Additional Chief Judicial Magistrate, Amritsar for which date he may be required to produce "the child.

As the main concern of the petitioner was regarding production of the child by Daljit Singh-respondent No. 1 and respondent No. 1 has given the aforementioned undertaking the present petition has been rendered infructuous and is, therefore, disposed of. Rule is discharged."

However, respondent No. 1 is directed to remain bound by his undertaking given today before this court.

In case at any stage, respondent No. 1 fails to produce the child before learned Additional Chief Judicial Magistrate, Amritsar for which date there are directions issued for the production of the child, the petitioner shall be at liberty to file an application for revival of the contempt petition.

9. Annexure P-8 is the complaint moved by petitioner No. 1 before the Police Post, District Court on 16.10.2010. The same reads as under:-

I beg to state that I have come to court to attend my case pending in the court of Sh. S.S. Panesar with my brother S. Devinder Singh @ Bittu. That today Daljit Singh has to bring my child Amaritvir Singh to court for purpose of meeting with me. After the case, Daljit Singh has beaten me and my brother in front of our advocate office and in front of the office of Sh. Vivek Gupta advocate. He gave fist blow on my brother's eye. I request before your good self that above said accused may be arrested and legal action may be taken against him and justice be granted to us.

10. Thus, with regard to the occurrence in question, both the parties had made their respective complaints to the police. It appears that the FIR in question is a result of matrimonial dispute pending between the parties. Both the parties, thus, tried to multiply the litigation already pending between them. Although, minor child was adopted by petitioner No. 1 and respondent No. 2 but the fact remains that petitioner No. 1 is the mother of the minor child and must have brought up the child as her own. It appears that after the court hearing, the anxiety of petitioner No. 1 might have been to meet the child out of love and affection and not with a view to commit a criminal offence. As a result of this, it is possible that a dispute arose between the parties as their relations were already strained. The fact that petitioner No. 1 had tried to meet her child out of love and affection cannot be equated with commission of offence punishable u/s 363 IPC.

11. Sections 361 and 363 IPC read as under:-

361 IPC Kidnapping from lawful guardianship.

Whoever takes or entices any minor under [sixteen] years of age if a male, or under [eighteen] years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

363 IPC Punishment for kidnapping.

Whoever kidnaps any person from [India] or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

12. Thus, to constitute an offence u/s 363 IPC, whoever entices a minor from the custody of lawful guardian can be said to have committed the offence. Petitioner No. 1 is none other than the mother of the minor child, who was aged at that time about four years. In the facts and circumstances of the present case, discussed above, petitioner No. 1 being mother of the minor child cannot be imputed with criminal intention to commit the offence of kidnapping. Hence, the continuation of criminal proceedings against the petitioners would be nothing but an abuse of process of law. Accordingly, the present petition is allowed. FIR No. 268 dated 8.8.2011 (Annexure P-1) u/s 363, 120-B IPC registered at Police Station Civil Lines, District Amritsar City and all the subsequent proceedings arising therefrom are quashed.