
(2011) 12 P&H CK 0121

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. M-10867 of 2009

Dharminder Singh

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 06-12-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 336, 363

Citation : (2012) 2 RCR(Criminal) 755

Hon'ble Judges : Ranjit Singh, J

Advocate : Mr. Gurcharan Doss, Advocate. Mr. Gaurav Garg Dhuriwala, DAG, Punjab, Mr. Harsh Aggar-wal, Advocate., Advocates for appearing Parties

Judgement

Ranjit Singh, J.

This order will dispose of Crl. Misc. Nos.M10867 and 13888 of 2009. Facts have been taken from Crl. Misc. No.M10867 of 2009.

Out of this matrimonial dispute between the petitioner and the complainantrespondent No.3, sufferer is the innocent child. A female child, who has born out of this wedlock, is being used as pawn to fight the battle by this couple.

Respondent No.3 has registered FIR No.49, dated 4.4.2009, under Sections 336/363/364/506/34 IPC and 27/54/59 under the provisions of the Arms Act, at Police Station Sadar, Nabha, District Patiala, against her exhusband making allegation that he had kidnapped the child from her custody. The husbandpetitioner, on the other hand, has filed this petition pleading that he is innocent and has been falsely implicated in this case in connivance of the police with the father of the complainant.

The marriage between the petitioner and respondent No.3 was performed on 27.1.2003. The parties lived together and out of this wedlock, a female child Damanjit Kaur was born. The relation between the parties became strained due to some temperamental differences. Both husband and wife have separated.

When the parties could not reconcile their differences, they decided to get divorce by mutual consent under Section 13B of the Hindu Marriage Act. A joint petition was, accordingly, filed on 27.8.2007, which was decided on 20.9.2008. Copy of the judgment and decree has been placed on record as Annexure P2.

As per the averment made in the petition, it was settled that respondent No.3 will not claim any maintenance and other expenses for the daughter from the petitioner till her majority and the daughter will reside with the mother.

After getting divorce from the petitioner, respondent No.3 married one Joga Singh. It is alleged that said Joga Singh did not treat the daughter of the petitioner properly. The parties, thereafter, entered into an agreement for handing over the custody of daughter Damanjit Kaur to the petitioner. Copy of the agreement is placed on record as Annexure P3. In this background, the petitioner would urge that FIR making allegation against him for having kidnapped his daughter is not made out and he has been falsely implicated.

Apart from these submissions, counsel for the petitioner contends that a father can never be accused of abducting his own child. Even if there is some matrimonial dispute where parties have decided to give the custody of the child to one of the parents, then primarily, such a dispute would always remain a dispute in regard to the custody of the child. In fact, nothing to show mens rea revealing allegation of abduction could be so alleged against either of the parents. In support of this proposition, counsel has also placed before me a judgment in the case of Sehnaz alias Santosh Gupta Vs. State of Punjab and another, 2007(1) RCR (Criminal) 990, where somewhat similar issue arose before this Court. There the mother had approached this Court to plead that she could not be accused of kidnapping her own child. That was also a case where divorce had been allowed between the husband and wife and the wife voluntarily had given the custody of the child to the husband.

She continued to have the visiting rights of the child with the permission of the husband. Wife took away the child and accordingly, allegation of kidnapping was made against her. This Court viewed that offence of kidnapping could not be made out against the wife in these circumstances. It is observed that at some weaker moment, the wife took child along with her, which is more out of love and affection rather than with any intention of kidnap the child, then she could not be accused of kidnapping of the minor as she was held to be equally competent legal guardian and a natural guardian like father. Under similar circumstances, the FIR in this case was directed to be quashed.

In support, reliance was also placed on Chandrakala Menon Vs. Capt. Vipin Menon, 1993(2) RCR (Criminal) 5(SC) and Harbans Singh Vs. Jaswant Singh, 1987(1) RCR 628 (P&H). The ratio of law as would emerge in Sehnaz alias Santosh Gupta" case (supra) is clearly attracted to the facts of the present case. It is rather a case on slightly better footing. Here, the the wife has voluntarily given the custody of the child to the husband. She has also remarried. The

husbandpetitioner, on the other hand, is still single and is rearing his child. I have had the occasion of summoning the child as well as the petitioner and spoke to them in the presence of the wife in the chamber. The child is happily living with the father and is doing extremely well in her studies. It was pointed out before me that this child has scored almost 100% marks in the last examination in which she appeared. It is, thus, clear that the welfare of the child is being well looked after by the father. In these circumstances and in the background that even the complainant is not very seriously contesting the present petition, no useful purpose would be served in allowing these criminal proceedings to continue.

The present petition is, accordingly, allowed. FIR No.49, dated 4.4.2009, under Sections 336/363/364/506/34 IPC and 27/54/59 under the provisions of the Arms Act and all subsequent proceedings arising therefrom are hereby quashed.

Crl. Misc. No.M13888 of 2009

This petition has been filed by other persons, who are being joined as coaccused in the above noted case. Once main accused for kidnapping has been relieved of the charge, no case would be made out for permitting the prosecution of the coaccused, who are joined later in this case.

In view of the reasons noted above, the proceedings against the petitioners in the present case are also hereby quashed.