

(2007) 01 P&H CK 0136
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 1925 of 2004

Gurdial Kaur

APPELLANT

Vs

Dalbir Singh and Another

RESPONDENT

Date of Decision : 25-01-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 323, 363, 364, 366

Citation : (2007) 1 RCR(Criminal) 975

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Advocate : Baldev Singh and Mr. Rahul Rathore, for the Appellant; H.S. Dhandi, for the Respondent

Final Decision : Dismissed

Judgement

Ranjit Singh, J.—Being aggrieved against the order passed by the Sessions Judge, Sangrur acquitting Respondent Dalbir Singh of the charges under Sections 364 and 323 IPC, complainant-Smt. Gurdial Kaur has filed this revision petition. Though it may sound strange, but Dalbir Singh was an accused of kidnapping his own daughter Ravneet Kaur alias Rinni and complainant Gurdial Kaur is mother-in-law of the accused.

2. The facts, in brief, are that Harnit Kaur daughter of complainant Gurdial Kaur married Dalbir Singh Respondent in the year 1991. He was, at that time, staying in California (USA). Ravneet Kaur alias Rinni was born out of this wedlock in September, 1992. Because of strained relations between the couple, wife Harnit Kaur came back to India in 1998. Thereafter, Harnit Kaur and Ravneet Kaur started living with Gurdial Kaur complainant. The case of custody of Ravneet Kaur alias Rinni was in progress. It is alleged that on 18.5.2002 while complainant Gurdial Kaur was going to leave Ravneet Kaur at bus stop for school bus, Respondent Dalbir Singh allegedly came there along with three unidentified persons and forcibly took Ravneet Kaur in his car. As per allegation, he had also

pushed Gurdial Kaur due to which she suffered injuries. It is on this basis that the case was got registered against Respondent Dalbir Singh and he was, accordingly, prosecuted for an offence u/s 364 and 323 IPC etc.

3. Trial Court noticed that the allegations of abduction against Respondent Dalbir Singh are supported by the testimony of Gurdial Kaur (PW-3) alone and that no independent witness was examined to support the version of the complainant. The Court also found the testimony of this sole witness unreliable because of the bitter inimical relations between Respondent Dalbir Singh and the complainant. The version of PW-3 Gurdial Kaur received a further dent when Anokh Singh PW-4 stated to have accompanied Gurdial Kaur PW-3 at the time of lodging report was found to be her other son-in-law. Trial Court also rightly pointed out that the place, from where a child was allegedly abducted, was a busy place and as such number of independent witnesses could have been available but were not examined. Finally, it was observed that evidence of child Ravneet Kaur was withheld and not produced in Court and was admittedly sent to USA during the pendency of the case in October 2002. Trial Court rightly drew adverse inference on this count against the prosecution and was justified in observing that the child if examined would not have supported the theory of abduction as advanced by the prosecution. The proceedings to seek custody of the child was initiated on behalf of Respondent Dalbir Singh through his father and these were being hotly contested. Even an application was moved by Respondent Dalbir Singh for restraining Gurdial Kaur PW-3 and her husband from taking his daughter Ravneet Kaur to some unknown place. It is in this background, the conduct of Gurdial Kaur PW-3 and his family in sending Ravneet Kaur to USA during the pendency of the case was critized by the Court. This was done by Gurdial Kaur PW-3 by obtaining new passport for which even an FIR was lodged against her. Finding her unreliable and that Gurdial Kaur PW-3 did not come out with truthful account, she was disbelieved by the Court. She was also found to have concealed the material fact that the child of Anokh Singh PW-4 had also accompanied them whereas in her evidence, she stated that no one had accompanied the child at the time of said abduction.

4. It is also noticeable that Respondent Dalbir Singh had moved an application seeking custody of his daughter, so that she could attend social and religious functions to be held at his residence. It was but natural for a father to be emotionally attached to his child and he must have carried strong desire to be with his child. It is in this context that an application was moved for restraining Gurdial Kaur PW-3 to take the child to an unknown place. Gurdial Kaur PW-3 ultimately succeeded in sending the child out of country and thus was able to deprive the father to have custody of his child. Relying on photographs Exs. D-1 to D-6, the Court had noticed that child was very happy in the company of her father and in this background, the allegations made by the prosecution that Respondent Dalbir Singh had abducted the child with intention to kill her were rather far fetched. Disbelieving Gurdial Kaur PW-3, the Court also found that the injuries could have been self-suffered as these were superficial in nature, two

being abrasions and the remaining two only a complaint of pain. Accordingly, trial Court acquitted Respondent Dalbir Singh of the charges framed against him. The counsel for the Petitioner could not point out any perversity in the reasoning or in the appreciation of evidence, which may call for interference in the order of acquittal made in favour of Respondent Dalbir Singh.

5. Trial Court appears to have totally missed one important aspect of the case, which in addition to factors already noticed, would further reveal that no interference in this case is called for. Can a father be accused of kidnapping her minor child ? It would not appeal to one's sense that father can really be can accused of kidnapping his own child, specially so when the contested claim is by the maternal grand-mother of the child. The relationship of father and daughter would continue to subsist irrespective of the fact whether the marriage between the parents is subsisting or not. Even if on some weaker moment, Respondent happened to take the child along with him, this would be more out of love and affection, rather than with any intention to kidnap the child or as alleged to kill her. What motive can be attributed to father for taking a child is really not understood. It can only be but love and affection alone. Can, under such circumstances, the father be accused of an offence of kidnapping, which perforce has to have some mens rea if allegations are to be established. It would rather be difficult to make the father to forget or forgo his love and affection for his own child. Allegation of kidnapping with intention to kill the child in this background certainly cannot be sustained. The allegations are really far fetched and appear to have been made by the complainant-Petitioner out of spite and vengeance. It will be rather difficult to allege that a natural guardian can be accused of an offence of kidnapping. Reference in this regard can be to the observations of Hon"ble Supreme Court in the case of *The facts of this case would rather fit in exactly and cover the present case totally. This was a case where girl child aged 7-1/2 years was residing with a maternal grand parents when her father came to see her and took her to Bombay. A complaint was lodged with the police. Magistrate took cognizance of the matter and directed the father to produce the child on a particular date. He did not do so claiming that he was held up in Bombay due to unavoidable reasons. Adjournment sought by the father was declined and he was directed to hand over the custody of the child to the police so that it could be restored to the grand parents. When the father failed to produce the child before the police, a case was registered and father was declared proclaimed offender. This order was challenged u/s 482 Code of Criminal Procedure The High Court quashed the order of Magistrate by recording a finding that accused being natural guardian could not be charged with an offence of kidnapping. This order of the High Court was challenged before Hon"ble Supreme Court by the wife and her parents and it was held by the Hon"ble Supreme Court that in view of the facts and circumstances of this case, the High Court was justified in quashing the criminal proceedings against the Respondent-father. It was further held that no fault can be found with the High Court order and the same was upheld. Even this Court in had the occasion of*

dealing with a similar case where the wife had left the house along with minor child against the wishes of her husband and the allegation of abduction was made against the parents of wife as she was staying with him. This was a case where the parents and young unmarried sister of the mother of the child were summoned by the Judicial Magistrate Ist Class to face trial under Sections 363 and 366 IPC. It was held that mother of the minor is equally competent legal guardian. Not only the complaint and the summoning order qua these Petitioners were quashed but the submission that minor son of the complainant was taken away from the custody of natural guardian without his consent and would reveal an offence u/s 363 IPC was also not accepted. Single Judge of this Court held that there was no merit in the stand in view of the fact that mother of a minor too is an equally competent legal guardian of the said minor. Ultimately, the Court found that complaint was complete misuse of the process of Court and complainant could have restored to remedies under Hindu Marriage Act or in the Civil Court instead of choosing the Petitioners in the said case for this harassment.

Under these circumstances and in the light of law as referred to above, it can be said that no offence of kidnapping/abduction u/s 364 IPC would be made out against the Respondent. He is natural guardian being father of the child.

Accordingly, no case for interference is made out and the present revision is accordingly dismissed.