
(1987) 02 P&H CK 0062

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 7123-M of 1986

Harbans Singh

APPELLANT

Vs

Jaswant Singh

RESPONDENT

Date of Decision : 23-02-1987

Acts Referred:

Citation : (1987) 1 AICLR 721 : (1987) 1 RCR(Criminal) 628

Hon'ble Judges : I.S.Tiwana, J

Advocate : T.S. Singh, J.V. Yadav, Advocates for appearing Parties

Judgement

I.S. Tiwana, J.

1. The petitioners who are the parents and young unmarried sister of the wife of the respondentcomplainant have been summoned by the Judicial Magistrate Ist Class, Panipat, to face trial under Section 363, 365/342, I.P.C. Besides the fact that the learned Magistrate has not referred to any piece of evidence on the basis of which he could reach the conclusion which he has recorded for summoning the petitioners. I find after a perusal of the evidence on record that the impugned order dated July 29, 1986, is simply preposterous and arbitrary. All that has been stated by the witnesses is that they saw the wife of the respondent i.e. Kanwaljit Kaur leaving the house of the complainant in the company of the petitioners on June 23, 1986 though the mother of the complainant was protecting to them not to take Kanwaljit kaur with them. It is nobody's case or evidence of these witnesses that Kanwaljit Kaur was either unwilling or protesting to her going with the petitioners or was not a party to the leaving of the house of the complainant.

2. It is not disputed before me that to constitute an offence of kidnapping the person who is alleged to have been taken away by the accused has to be a minor under the age of 16 years which Kanwaljit Kaur was not by any stretch of imagination. Similarly, the learned Counsel for the respondent is not in a position to dispute that to give rise to an offence under Section 365, the alleged kidnapping or abduction of the person concerned has to be with the intent to cause that person to be secretly or wrongfully confined at a place of the choice of

the accused. That even is not the case in hand. Rather the evidence on record is that before leaving the house of the complainant on June 23, 1986, the petitioners had actually stayed with him for 2/3 days. It is also on record that sometime earlier when the complainant had brought his wife Kanwaljit Kaur from the house of her parents, he had to resort to a lot of persuasion to bring her back. In spite of this evidence, the learned Magistrate has chosen to summon the petitioners to face the trial for the offences already indicated.

3. At one stage Mr. Yadav, learned Counsel for the respondent chose to contend that at least in the case of Meenu minor son of the respondent an offence under Section 363, I.P.C. was made out as he had been taken away from the custody of the natural guardian i.e. complainant without his consent. I, however, see no merit in this stand of the learned Counsel in view of the fact that the mother of the minor too is an equally competent legal guardian of the said minor. It was she who had taken the child with her and there was no question of the child being taken away by the petitioners.

4. I am thus satisfied that the complainant is completely misusing the process of the Court. Instead of resorting to his remedies under the Hindu Marriage Act or in the civil Court he has chosen to harass the petitioners to bring his wife back to the matrimonial home. Besides all this, Kanwaljit Kaur who is present in Court has also filed her duly attested affidavit which shows that she is living with her parents of her free will and she did leave the house of the complainant along with her minor child aged about 2 years of her own accord.

5. For the reasons recorded above, this petition is allowed and the complaint and the resultant proceedings are quashed.