
(1971) 02 AHC CK 0002
In the Allahabad High Court

Khyali Ram and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 25-02-1971

Acts Referred:

Hindu Minority and Guardianship Act, 1956 — Section 6
Penal Code, 1860 (IPC) — Section 361, 363
Hindu Minority and Guardianship Act, 1956 — Section 6
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Hindu Minority and Guardianship Act, 1956 — Section 6
Penal Code, 1860 (IPC) — Section 361, 363

Citation : (1971) CriLJ 1365

Hon'ble Judges : H.C.P. Tripathi, J

Bench : Single Bench

Judgement

H.C.P. Tripathi, J.—Applicant Khyali Ram is admittedly the father of the minor Kalua. u/s 6 of the Hindu Minority and Guardianship Act, 1956, he is the natural guardian of the minor. It is true that the custody of a minor, who has not completed the age of five years shall ordinarily be with the mother as provided under the aforesaid Act. As Khyali Ram is the natural guardian even if he has removed the minor from the custody of the mother, there is no question of his committing an offence u/s 363 of the Indian Penal Code.

2. Section 361 of the Code runs as follows :

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 guardian.

3. In order to constitute an offence u/s 363 of the Indian Penal Code, there must be kidnapping of a person from lawful guardianship. Here Khyali Ram is himself the lawful guardian of the minor. It cannot, therefore, be said that he

committed .an offence u/s 363 of the Indian Penal Code by setting the custody of his own son from his wife.

4. The other applicants are alleged to have helped Khyali Ram in getting the custody of his son. They too therefore, cannot be held to have committed an offence u/s 363 of the Indian Penal Code.

5. No doubt, u/s 6 of the Hindu Minority and Guardianship Act, 1956, the custody of a minor who has not completed the age of five years shall ordinarily be with the mother but the father being the natural guardian of a Hindu minor cannot be held to have committed an offence of kidnapping by removing his minor son from the custody of the mother.

6. If the son has not yet completed the age of five years, it shall be open to the opposite party to claim her custody by taking appropriate proceedings in Civil Courts.

7. In the result, therefore, it is obvious that even if all the allegations made in the complaint filed against the applicants are held to be true, no offence u/s 363 of the Indian Penal Code is made out against them.

8. Accordingly, this revision is allowed. The impugned order of the Magistrate taking cognizance u/s 363, IPC is quashed.