

Before Shalini Singh Nagpal, J.

xxx—Petitioners

versus

STATE OF HARYANA AND ANOTHER—Respondents

CRM-M No. 24031 of 2023

May 06, 2026

Indian Penal Code, 1860—Ss. 365, 323, 406, 498-A—Code of Criminal Procedure, 1973—S. 482—Quashing of FIR under Section 365 IPC sought by husband and his family members who had custody of the minor daughter. Custody was given by the complainant/wife in a habeas corpus petition. Thereafter, she got the FIR registered.

Whether custody of child can be obtained by pressure of FIR rather than availing legal remedies?

Father is the natural guardian of a minor child.

FIR quashed being a glaring example of misuse and abuse of the process of law. Custody cannot be obtained by putting pressure rather than availing legal remedies, which take a long time to conclude. Petition allowed.

Held, that the subject FIR is a glaring example of misuse and abuse of the process of law by respondent No.2, to secure and obtain custody of the minor child by putting the petitioners and their families members under pressure, instead of availing the legal remedy which would take long to conclude.

(Para 18)

Further held, that yet another aspect of the case is that the offence of kidnapping the minor child was not invoked by the police when FIR No. 22 dated 12.01.2022, under Sections 323, 406, 498-A IPC, came to be registered, even though identical allegations were made in the previous complaint. It is indeed surprising that after filing reply in the Habeas Corpus petition on 03.02.2021 that the child was given to the in-laws by respondent No.2 herself, the State of Haryana lodged FIR under Section 365 IPC, against the brother-in-law and his wife on 25.03.2022. Registration of first information report in respect of the very same allegation regarding which police refused to act upon when FIR No.22 dated 12.01.2022 was registered, does not have legal sanction particularly in the facts and circumstances of the case when respondent No.2 was well aware that the custody of the minor child was with her father, her natural guardian.

(Para 19)

Cases Referred:

State of Haryana v Bhajan Lal,
1992 Supp (1) SCC 335 (Para 7)

Mohmood Ali and others v State of UP and others
2023 SCC OnLine SC 950 (Para 8)

Suman Mishra and others v State of UP and another,
2025 INSC 203 (Para 9)

Durga Dutt Sharma, Advocate, *for the petitioners.*

Vikas Bhardwaj, AAG Haryana.

Neeraj Goel, Advocate for respondent No.2.

SHALINI SINGH NAGPAL, J.

(1) Prayer in the petition under Section 482 of the Code of Criminal Procedure, is for quashing of FIR No. 0225 dated 25.03.2022 under Section 365 IPC, Police Station Ambala Cantt., District Ambala and all subsequent proceedings arising therefrom.

(2) The facts per FIR:

The complainant stated that her marriage with Navdeep Arora son late Vilayat Raj was solemnized on 21.01.2008 at Phoenix Club Ambala. The same year, on 25.12.2008 her daughter Sana Arora was born. Soon after the marriage, her in-laws and her husband started harassing her for dowry. Due to many other reasons, the relationship with her husband was not cordial. After selling her in-laws matrimonial home, her brother-in-law Lokesh Arora and his family moved to Mumbai. Paras Arora lived with his wife and her mother-in-law in a rented house for sometime and later moved to Mumbai. He visited her father's house from time to time. In 2020, there was a lock down in the country. On 17.06.2020, as soon as the lock down was over, all family members of her husband i.e. her brother-in-law and his family visited her, despite her protest that there was no space in the house and pandemic was going on. Angered by this, her husband demanded a divorce and they agreed to divorce. On 22.6.2020, she and her husband got the divorce papers prepared but the case was not filed. Her husband left her and her daughter on 28.06.2020 without any information. Many a times, she tried to contact him for divorce, but he did not respond.

Complainant further alleged that on 27.07.2020, her brother-in-law Paras Arora spoke to her rudely and in conspiracy with her husband, levelled false accusation against her. Her sister-in-law Shraddha called her and asked her to send her daughter for Ganesh

Puja. Thereafter, her brother-in-law Paras Arora and his wife Yachana Arora fraudulently and forcibly took away her daughter on 20.08.2020. The culprits instigated her daughter Sana aged 13 years against her and did not allow her to meet or talk to her. The family changed their place of residence very quickly. They had cheated many banks. The culprits were requested many times to return the child but the child was not given back and was kept forcibly. She was a Teacher in the school where her daughter studied. For the last 1.5 years, her study was affected. The intention of the accused was to annoy her and pressurize her father. They were trying to defame them and threatened to kill them. Her husband was a drunkard. He came late at night and her daughter was under their pressure. Legal action against Paras Arora and Yachana Arora was prayed for taking away her minor daughter fraudulently and forcibly.

(3) This court vide order dated 11.05.2023, stayed proceedings before the trial Court qua the petitioners.

(4) Learned counsel for the petitioners submits that marriage of Navdeep Arora, brother of petitioner No.1, was solemnized with complainant-respondent No.2 on 21.01.2008 at Ambala as per Hindu rites and ceremonies and out of the wedlock, a female child namely Sana Arora was born on 25.12.2008. Since the day of marriage, there remained disputes between Navdeep Arora and respondent No.2, who were residing separately in a portion of the house. Brother of petitioner No.1 Lokesh Arora, shifted to Bombay in 2011, followed by petitioners and their mother, who shifted to Bombay in 2014. Quarrels arose between brother of petitioner No.1 and respondent No.2 on petty issues. Respondent No.2 obtained signatures of her husband on mutual divorce papers fraudulently but he did not appear in the court to file the petition. On that account, respondent No.2 was enraged and threatened to involve the entire family in false cases. She filed a petition under Section 13 of the Hindu Marriage Act, 1955, in 2020 and later lodged FIR No.22 dated 12.1.2022, under Sections 323, 406, 498-A IPC, Police Station Ambala Cantt. against her husband, mother-in-law, brother-in-law and sister-in-laws on false and frivolous facts. In that FIR, respondent No.2 levelled allegations that petitioners, in conspiracy with other accused, took away minor Sana Arora on 20.10.2020 on pretext of celebrating Ganesh Puja/Ganesh Chaturthi but did not sent the child back.

(5) It was argued that the minor child was in fact residing with her father and this fact came on record during pendency of Criminal Writ Petition No. 10730 of 2020 filed by respondent No. 2 against petitioners and their family members praying for custody of minor child. In that petition, reply was filed by DSP Ambala Cantt. stating

that the minor was in legal custody of her father. Thereafter, the petition was withdrawn to avail alternative remedy for custody of the child. However, subject FIR under Section 365 IPC was lodged at Police Station Ambala Cantt. at the instance of respondent No.2 alleging that petitioners had forcibly taken away the minor child, fully aware that the minor was in legal custody of her father. The local police, under the influence of respondent No.2, was pressurizing the petitioners to hand over custody of the minor. Challan was later submitted in the FIR in haste. False and frivolous allegations were levelled in the FIR in order to illegally obtain custody of the minor. The FIR and the evidence collected did not disclose commission of any cognizable offence and the impugned FIR was liable to be quashed.

(6) Learned State counsel has filed status report by way of affidavit of Ashish Chaudhary, HPS, Deputy Superintendent of Police, Ambala Cantt, which was later on adopted by learned counsel for respondent No.2. Learned State counsel assisted by Mr. Neeraj Goel, learned counsel for respondent No.2 has opposed the petition arguing that disputed questions of facts were not required to be gone into by the Court and the allegations in the FIR disclosed commission of a cognizable offence, serious in nature. Petitioners forcibly took away the minor child from custody of her mother from house No.2744 Timber Market, Ambala Cantt. without her consent and it was not a fit case to quash by invoking inherent powers of the Court.

(7) In ***State of Haryana versus. Bhajan Lal***¹, Hon'ble Supreme Court has formulated the parameters in terms of which the powers under section 482 of CrPC, 1973 could be exercised. The Court held that quashing may be appropriate:

“(a) where the allegations made in the First Information Report or the complaint, 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;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the

¹ 1992 Supp (1) SCC 335

same do not disclose the commission of any offence and make out a case against the accused;

(d) 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 a Magistrate as contemplated under Section 155(2) of the Code;

(e) 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;

(f) 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 a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with malafide and/or where the proceeding 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.

(8) In ***Mohmood Ali & Ors. versus State of U.P. & Ors.***², it was observed that when an accused comes before the High Court, invoking either the inherent power under Section 482 CrPC or the extraordinary jurisdiction under Article 226 of the Constitution, to get the FIR or the criminal proceedings quashed, essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive of wreaking vengeance, then in such circumstances, the High Court owes a duty to look into the FIR with care and a little more closely. It was further observed that it will not be enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not as, in frivolous or vexatious proceedings, the court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection, to try and read between the lines.

² 2023 SCC Online SC 950

(9) In ***Suman Mishra and Ors. versus State of Uttar Pradesh and Another***³, it has been observed that in frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case, over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 Cr.P.C. or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation.....”

(10) To support the prayer in the petition, the petitioners, who are no other than the brother-in-law and sister-in-law of respondent No.2, have brought on record numerous documents, none of which have been disputed during the course of arguments. It transpires from the documents on record that respondent No.2 was married with Navdeep Arora on 21.01.2028 at Ambala as per Hindu rites and ceremonies. Out of the wedlock, a girl child namely Sana Arora was born on 25.12.2008. The child was living in care and custody of her parents. Disputes arose between the husband and wife and the discord led to registration of FIR No. 22 dated 12.01.2022, under Sections 323, 406 and 498-A IPC Police Station Ambala Cantt. (Annexure P3) against the husband Navdeep Arora and his family members. Petitioners, Paras Arora and Yachana Arora, brother-in-law of respondent No.2 and his wife, were also arraigned as accused in the said FIR. Respondent No.2 alleged in FIR No. 22 dated 12.01.2022 that despite sufficient dowry articles given at the time of marriage, the accused humiliated, harassed and taunted her for bringing insufficient dowry, ill-treated and abused her; that accused No.1 Navdeep Arora physically assaulted her and all accused harassed and humiliated her. He mis-appropriated her Istri Dhan and was not loyal. One of the various other allegations levelled against the accused in the aforementioned FIR is reproduced hereinunder:

‘.....This situation was taken by them as offensive attitude and they all planned a conspiracy to harm the complainant physically and mentally and they asked the complainant to send the girl child for 2/3 days to celebrate Ganesh Chaturthi and also to spend some time with them. The complainant denied to send her daughter but on 20.08.2020, the accused No. 2 to 6 deceitfully took the girl child from the complainant. The accused have not send the girl child

back to the complainant. After this illegal act of accused for taking away the minor daughter illegally from the custody of the petitioner, the petitioner filed a writ petition of Habeas Corpus against the accused, before the Hon'ble Punjab and Haryana High Court. 15. That the accused No.1 started quarrelling with the complainant and her father and created scenes. Due to such misdeeds of the accused No.1 a complaint was lodged in the police station Sadar, Ambala'

(11) It has not been denied that after getting FIR No. 22 on 12.1.2022 registered, respondent No.2 filed a Criminal Writ Petition No. 10730 of 2020, titled as '*Shakshi Saini Versus State of Haryana and others*', claiming a writ in the nature of Habeas Corpus, for securing the custody of her minor daughter-Sana Arora, wherein Deputy Superintendent of Police, Ambala, on behalf of respondents No. 1 to 3 filed reply (Annexure P-4) stating as under:

‘4 That since the petitioner has given the custody of the ward-Sana Arora of her own will by accepting the requests of the private respondents No. 6,7 and 9, who are her Dewar and Bhabis respectively, thus she can take the custody back of Ward through the competent court of jurisdiction only.’

(12) During pendency of the Criminal Writ Petition, an application (Annexure P-5) under Section 482 Cr.P.C. was filed by respondent No.2 on 28.02.2022, seeking withdrawal of the case stating therein that she filed the writ seeking direction to private respondents No. 5 to 9 to hand over custody of her minor daughter but now, looking at the interest of her daughter, her education, mental health etc. she had decided to seek custody by filing proper petition for custody in the District Court under the relevant provision, at the earliest and that she was no more interested in pursuing the writ petition. She also filed a supporting affidavit Annexure P-6 along with the application.

(13) Instead of approaching the Court of competent jurisdiction to seek custody of the child, respondent No.2 got the subject FIR No. 225 dated 25.03.2022, under Section 365 IPC, Police Station Ambala Cantt. registered against the petitioners, on identical allegations which she levelled in previous FIR No. 22 dated 12.1.2022 under Section 323, 406, 498-A IPC, Police Station Ambala Cantt.

(14) Clearly there is a dispute between the mother and father of the child regarding her custody. Custody of the father who is the child's natural guardian cannot be illegal. Though, the FIR has been cleverly lodged against the brother-in-law (*devar*) and his wife, respondent No.2 is not oblivious of the fact that the child is in actual custody of her father. This becomes clear from the allegations in FIR No. 22 dated

12.1.2022, under Sections 323, 406, 498-A IPC wherein she alleged under a conspiracy, accused No. 2 to 6 (Swarn Lata, Lokesh Arora, Shardha Arora, Paras Arora and Yachana Arora), deceitfully took the girl child from her.

(15) The Writ of Habeas Corpus vide No. 10730 of 2020 was also filed against the father of the child, besides his other family members including the petitioners. From the affidavit Annexure P-5 of respondent No.2 filed in the Writ Petition also, it becomes clear that respondent No.2 was seeking direction to private respondents No. 5 to 9 to hand over the custody of the detinue. Private respondent No.5 was no other than father of the minor child. Well aware that father of the minor, being her natural guardian could not in law, be accused of kidnapping the child from the keeping of her mother, the case was maliciously got registered against the brother-in-law and his wife accusing them of kidnapping the minor child. Such vexatious litigation cannot be furthered by the Court as it is clear enough that the FIR is only meant as a weapon of harassment, to secure custody of the minor child, by exerting pressure.

(16) A very intriguing feature of the case is the written statement of the State of Haryana, respondent No.1 in CRWP No.10730 of 2020 relevant portion whereof has been reproduced in the preceding paragraph of the judgment. It states that petitioner (respondent No.2 before this Court) had herself given custody of her ward Sana Arora to private respondents No. 6, 7 and 9, who were her brother-in-law and sister-in-law. Thus, she can take the custody back through competent Court only. The State of Haryana, for the reasons best known, lodged FIR against the brother-in-law and sister-in-law of respondent No.2 under Section 365 IPC which provides the punishment for kidnapping a person with the intent to cause that person to be secretly and wrongfully confined. The allegation of secretly and wrongfully confining the minor child is nowhere discernible from the contents of the FIR. Apparently, the police authorities were playing in the hands of respondent No.2 in lodging the FIR, being fully aware that it was she who made over the custody of the child to her in-laws family.

(17) Not only this, Annexure P-15 order of learned Additional Sessions Judge, Ambala, dated 29.08.2022 in Bail Application No. 690 of 2022 titled '*Yachna Arora and another Versus State*', reveals that the petitioners, who filed the bail application, were ordered by the Investigating Officer to produce the daughter of respondent No.2. Relevant observations of the learned Additional Sessions Judge, Ambala in the order are reproduced as under:

‘The daughter of the complainant is with her father i.e. her

natural guardian, as observed in Order Dated 16.08.2022, vide which interim anticipatory bail was granted to the applicants/accused persons. It is an admitted fact that during proceedings of the Habeas Corpus Petition which was filed by the complainant in Hon'ble High Court of Punjab and Haryana, complainant was made to meet her daughter twice. This Court totally fails to understand as to how, in the facts and circumstances of the case, applicant/accused persons could have been ordered by the Investigating Officer to produce daughter of the complainant, and how it could have been written in the Status Report **“Jo aaropiyan Yachana Arora wa Paras Arora nee aaj tak ladki Sana Arora ko mukaddama haja mein baramad nahin karvaya. Jo Ladki Sana nablig hai, usko is avastha mein ek baar baramad kiya jana ati avashyak hai”**. This is not a Custody Petition wherein as an interim measure, the Court dealing with the matter, has passed Order to the effect that child be produced from the custody of respondents, so that petitioner may meet her. It is totally incomprehensible as to **how the Investigating Officer could have ordered applicants/accused persons by way of Notice to produce the child i.e. daughter of the complainant**. In this view of the matter, let the matter be brought to the notice of the Superintendent of Police, Ambala, **Copy of this order be sent to SP Ambala**. Adjourned to 6.9.2022 for further Status Report. Interim anticipatory bail granted vide Order Dated 16.8.2022 is extended till then.’

(18) The subject FIR is a glaring example of misuse and abuse of the process of law by respondent No.2, to secure and obtain custody of the minor child by putting the petitioners and their families members under pressure, instead of availing the legal remedy which would take long to conclude.

(19) Yet another aspect of the case is that the offence of kidnapping the minor child was not invoked by the police when FIR No. 22 dated 12.01.2022, under Sections 323, 406, 498-A IPC, came to be registered, even though identical allegations were made in the previous complaint. It is indeed surprising that after filing reply in the Habeas Corpus petition on 03.02.2021 that the child was given to the inlaws by respondent No.2 herself, the State of Haryana lodged FIR under Section 365 IPC, against the brother-in-law and his wife on 25.03.2022. Registration of first information report in respect of the very same allegation regarding which police refused to act upon when FIR No.22 dated 12.01.2022 was registered, does not have legal

sanction particularly in the facts and circumstances of the case when respondent No.2 was well aware that the custody of the minor child was with her father, her natural guardian.

(20) Though the inherent powers of the Court are to be exercised rarely and with much circumspection, the powers must be used to do the real and substantial justice, for the administration of which the Court exists. FIR No. 225 dated 25.03.2022 is a clear misuse and abuse of the process of law which cannot be allowed to be perpetuated. The case is squarely covered by decision of the Apex Court in ***Bhajan Lal's case (supra)***. The initiation of FIR and continuance thereof must be nipped at the very initial stage of the case.

(21) Accordingly, the petition is allowed. FIR No. 0225 dated 25.03.2022 under Section 365 IPC, Police Station Ambala Cantt., District Ambala and all subsequent proceedings arising therefrom, are hereby quashed qua the petitioners.

(22) All the pending miscellaneous applications, if any, stand disposed of.

Reporter-Shubreet Kaur