

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Criminal Petition No.889 OF 2015

Between:

Mohd.Jeelani

... Petitioner

And

1. The State of Telangana, rep. by
its Public Prosecutor, High Court
for the State of Telangana, Hyderabad

...Respondent

2. Smt.Safiya Begum

... Respondent/
defacto complainant

DATE OF JUDGMENT PRONOUNCED: 20.10.2022

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

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|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

K.SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**

+ CRL.P. No. 889 of 2015

% Dated 20.10.2022

Mohd.Jeelani

... Petitioner

And

\$1. The State of Telangana, rep. by
its Public Prosecutor, High Court
for the State of Telangana, Hyderabad

...Respondent

2. Smt.Safiya Begum

... Respondent/
defacto complainant

! Counsel for the Petitioners: Sri V.R.Machavaram

^ Counsel for the Respondents: Public Prosecutor for R1
G.L.Narasimha Rao for R2.

>HEAD NOTE:

? Cases referred

¹ (1993) 2 SCC 6

THE HON'BLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION No. 889 OF 2015****O R D E R:**

This Criminal Petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed seeking to quash the FIR in Crime No.396 of 2014 on the file of Saidabad Police Station against the petitioner. The petitioner herein is accused in the said crime. The offence alleged him is under Section 363 of IPC.

2. Heard learned counsel for the petitioner and learned Assistant Public Prosecutor appearing for the State and perused the record.

3. According to the complaint filed on 18.11.2014, the 2nd respondent/defacto complainant stated that four months prior to the complaint, her daughter namely Mybhin and her younger son Mohd.Omer Farooq were taken away by her husband from her residence. Again on 15.11.2014 her elder son Mohd.Abdul Quavi was taken away by her husband from school. The children were in her custody and when asked, the father of the petitioner informed that the children will be handed over, but, failed to hand over the children and as such she requested to take necessary action against the petitioner.

4. On the basis of the said complaint, police registered the present FIR for the offence under Section 363 of the Indian Penal code.

5. Section 361 of Indian Penal Code reads as follows;

361. Kidnapping from lawful guardianship.—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 guardianship.

6. Admittedly, the petitioner is none other than the husband of the defacto complainant and biological father of the children. He is the natural guardian of the children. Admittedly, a case vide O.P.SR.No.7051 of 2014 filed by the petitioner herein in the month of December, 2014 for custody and for appointing him as natural guardian of his children, was pending before the Family Court, City civil Courts, Hyderabad; and that the children are in his custody.

7. Section 363 of the Indian Penal Code makes kidnapping a punishable offence and whoever kidnaps a minor or entices any minor under the age of 16 in case of male or under the age of 18 in case of female, without consent of the guardian, is said to kidnap such minor from lawful guardianship.

8. The petitioner is the natural and legal guardian of his children even after the separation of the petitioner and the complainant by divorce on 11.11.2014. For the said reason, the petitioner who is the father and natural guardian of the children cannot be prosecuted for

the offence under Section 363 of the Indian Penal Code. There is no order by any competent Court granting custody of the children to the complainant.

9. The Honourable Supreme Court in ***Chandrakala Menon (MRS) v. Vipin Menon (CAPT)***¹ held that taking away of the minor daughter by the father will not amount to kidnapping.

10. No offence is made out against the petitioner for taking his own children to take care of them, by no stretch of imagination the act of the petitioner can be termed as kidnap. For the said reasons, the proceedings in Crime No.396 of 2014 against the petitioner for the offence under Section 363 of the Indian Penal Code, cannot be allowed to continue and are liable to be quashed.

11. Accordingly, the Criminal Petition is allowed and the FIR in Crime No.396 of 2014 on the file of the Saidabad Police Station against the petitioner/accused, is quashed.

Miscellaneous applications pending, if any, shall stand closed.

K.SURENDER, J

Dt.:20.10.2022
Note: L.R.copy
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¹ (1993) 2 SCC 6

THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION NO. 889 OF 2015

Dt. 20.10.2022

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