

**JUDGMENT SHEET**  
**ISLAMABAD HIGH COURT, ISLAMABAD,**  
**JUDICIAL DEPARTMENT**

**W.P. No.710-Q/2019**

Abdul Rouf

*versus*

S.H.O. P.S. Sabzi Mandi, Islamabad, etc.

Petitioner by: Mr. Muhammad Afzal Janjua, Advocate.

Respondents by: Mr. Sadaqat Ali Jahangir, State Counsel.  
Mushtaq, S.I.

Date of Decision: 26.06.2019.

**MOHSIN AKHTAR KAYANI, J:** Through this writ petition, the petitioner prays for quashing of FIR No.68, dated 12.02.2019, under Section 365 PPC, P.S. Sabzi Mandi, Islamabad, which has been registered against him.

2. Brief facts referred in the instant matter are that marriage between Abdul Rouf "*petitioner*" and Mst. Sadaf Ameen "*respondent No.3/complainant*" was solemnized on 26.01.2001, who were blessed with son namely Muhammad Hamza (18 years) and daughter namely Aisha Zamar (17 years), however the marriage was dissolved on 24.05.2004. Consequently, litigations between petitioner and respondent No.3 with respect to custody of said minors remained pending up to Hon'ble Supreme Court and ultimately custody of minors was given to respondent No.3. On 29.01.2019, petitioner was telephonically informed to reach Alam Hospital, Wah Cantt, Taxila, Rawalpindi as Mst. Aisha Zamar is in critical condition. Petitioner as well as respondent No.3 along with her husband reached at the said hospital, where the minor refused to go with her mother i.e. respondent No.3 and stepfather, rather insisted to go with petitioner and consequently with mutual consent of

the parties, the minor was handed over to petitioner in presence of her stepfather, hospital staff and teacher. But later on, the case FIR has been registered against the petitioner on the basis of complaint filed by respondent No.3, wherein she alleged that the petitioner on the pretext of medical treatment of Mst. Aisha Zamar had taken away her and refused to hand over her back the minor to respondent No.3. Hence, the instant writ petition.

3. Learned counsel for petitioner contends that the case FIR has falsely been registered against him as the minor was handed over to him in presence of respondent No.3 and her stepfather as well as hospital staff, even otherwise, the minor herself wanted to live with petitioner, rather to go back with her mother; that Mst. Aisha Zamar/minor being *sui juris* is capable of managing her affairs, whereas the said minor wants to live with petitioner with her own free will; that the police is in league with respondent No.3 and wants to humiliate the petitioner in the eyes of public on the basis of case FIR No.68/19, which is liable to be quashed for having been maliciously registered.

4. Conversely, learned State Counsel opposed the instant petition for quashing of FIR No.68/19 and contended that petitioner has violated the directions of Hon'ble Supreme Court with respect to custody of minor; that challan has been submitted in the Court, therefore, petitioner can avail remedy available to him under Section 265-K Cr.P.C., hence, the instant writ petition may be dismissed.

5. Arguments heard, record perused.

6. The perusal of record reveals that the petitioner has been alleged as accused in case FIR No.68, dated 12.02.2019, under Section 365 PPC,

P.S. Sabzi Mandi, Islamabad, which has been registered on the complaint of respondent No.3 for the abduction of her daughter Aisha Zamar, aged 17 years. The brief background referred in the entire discussion as well as in the writ petition discloses that petitioner was married to respondent No.3 on 26.01.2001, who were blessed with son Muhammad Hamza and daughter Aisha Zamar, however divorce took place on 24.04.2004, which resulted into litigations up to the apex Court regarding custody of minor and ultimately the custody of minors was given to respondent No.3/mother. When minors attained the age of 13/12 years, petitioner again filed petition under Section 25 of the Guardian & Wards Act, 1890 before learned Guardian Judge, Taxila for custody of minors, which was rejected, however appeal thereof filed before learned Additional District Judge, Taxila was decided in favour of the petitioner. During pendency of said petition, respondent No.3 filed an application before learned Sessions Judge (West), Islamabad, whereby the Court vide orders dated 02.03.2019 and 07.03.2019 directed the petitioner to hand over custody of minors to respondent No.3 despite the fact that appeal preferred by petitioner before learned Additional District Judge was decided in his favour. The petitioner feeling aggrieved thereby assailed the said orders of the learned Sessions Judge (West), Islamabad through W.P. No.871/2019, whereby this Court has set aside the same vide order dated 03.04.2019.

7. Besides the above referred background of the issue in hand, the minor was allegedly abducted by petitioner from Alam Hospital, Wah Cantt, Taxila, Rawalpindi as referred in the FIR, where minor was under treatment and the minor was handed over to petitioner in hospital with

mutual consent and when Aisha Zamar/minor refused to join her mother, the instant FIR has been lodged against the petitioner/father.

8. During the proceedings of this case and connected W.P. No.871/2019, Mst. Aisha Zamar put appearance before the Court and categorically recorded her stance in open Court that she was not abducted by anyone and her father (petitioner) is properly looking after her day to day affairs, whereas the said stance has not been refuted by anyone, even the Investigation Officer present before the Court acknowledged that Mst. Aisha Zamar/minor was not abducted, though he has submitted the challan in court.

9. In such type of situation, when the alleged abductee herself recorded her stance in open Court that she was not abducted by anyone, even otherwise, the accused/petitioner is her real father and the Court of learned Additional District Judge, Taxila has already passed the order in favour of petitioner, there is no question left to proceed in terms of Section 365 PPC as neither the elements of kidnapping and abduction have been surfaced on record nor Mst. Aisha Zamar/minor has secretly been confined by the petitioner, against whom case FIR under Section 365 PPC has been registered.

10. On the other hand, notices have been issued to respondent No.3/complainant, even Investigation Officer contacted her to appear before this Court, but she remained adamant not to appear before the Court to controvert the stance of petitioner for quashing of the instant FIR and support her complaint against the petitioner for abduction of her daughter Mst. Aisha Zamar, therefore, this Court comes to an irresistible conclusion that case FIR No.68/19, dated 12.02.2019, under

Section 365 PPC, P.S. Sabzi Mandi, Islamabad has been registered with malafide intention without considering the legal position, even the matter exclusively falls within the jurisdiction of Guardian Court, hence, exceptional circumstances of extraordinary nature came on record to save the petitioner/father from the abuse of process of law as no criminal case is made out.

11. In view of above discussion, the instant writ petition is ALLOWED and case FIR No.68/19, dated 12.02.2019, under Section 365 PPC, P.S. Sabzi Mandi, Islamabad is hereby QUASHED.

(MOHSIN AKHTAR KAYANI)  
JUDGE

Khalid Z.