

JUDGMENT SHEET.
ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT.

W.P No. 3221/Q/2019

Mst. Fatima Sheikh vs. S.H.O P.S Sabzi Mandi, Islamabad etc.

Petitioner by:	Ch. M. Farrukh Javed, Advocate alongwith petitioner.
State by:	Barrister Ayesha Siddique Khan, State Counsel. Muhammad Arif, ASI.
Complainant	In person. Hassan Mujeeb and Jabeen, co-accused are present.
Date of Hearing:	26.11.2019.

MOHSIN AKHTAR KAYANI, J. Through this writ petition, the petitioner has prayed for quashing of F.I.R No. 333, dated 04.09.2019, registered U/s 365, PPC, P.S Sabzi Mandi, Islamabad.

2. Brief facts referred in the instant FIR registered on the complaint of Salman Muzafar/respondent No.2 are that on 03.09.2019, his real son namely Zimral Salman has gone to meet his real mother/petitioner in her office situated at Sector I-11/4, Islamabad, however, when he did not return, he was contacted on his phone, but his phone (son's phone) was off and same was the position with the mobile phone of his ex-wife, Mst Fatima Sheikh and the minor Zimral Salman was abducted by his ex-wife with the help of her brothers, despite the fact that Fatima Sheikh has lost his litigation from Civil Court to High Court level regarding custody of the son.

3. Learned counsel for the petitioner contends that the petitioner has not abducted the minor Zimral Salman as alleged in the instant FIR and the same was registered with malafide even from the bare perusal of the contents of FIR, the same does not disclose commission of any cognizable offence as the petitioner is the real mother of Zimral Salman (alleged abductee), who was born on 12.12.2001 and approximately, he was 17

years and 09 months at the time of alleged occurrence. He further contends that the minor is grown up man, who came to see his mother by his own free will, even otherwise, his statement U/s 164 Cr.P.C before learned Judicial Magistrate has been recorded, which further clarify the entire situation and as such the minor was not removed from the lawful guardianship of the father/respondent No.2.

4. Conversely, Salman Muzaffar/respondent No.2 in person submits that his ex-wife has filed the case for custody of the minor daughter Rashail Muzaffar and Zimral Salman before the Guardian Court at Rawalpindi, but she was not succeeded to get the custody up to the High Court level, whereafter the matter has attained finality and as such the minors are residing with him. He further submits that the minor Zimral Salman was kidnapped by the petitioner with the help of his brothers and any statement of Zimral Salman recorded before the learned Judicial Magistrate is obtained under duress and influence, which could not be considered valid at this stage and even the challan has been submitted in the Court.

5. Arguments heard, record perused.

6. From the perusal of record, it reveals that the complainant/respondent No.2/father of the minor Zimral Salman, who was born on 12.12.2001, aged about 17 years and 09 months alleged in the FIR that minor has been allegedly abducted by the petitioner/Fatima Sheikh, real mother on 03.09.2019 in the vicinity of Sector I-11/4, Islamabad, when the minor son Zimral Salman has gone to meet his mother in her office. The investigation report reveals that the Zimral Salman has recorded his statement before the learned Judicial Magistrate U/s 164 Cr.P.C, in which he has specifically stated that he was not abducted and has gone to see his mother and he remained with his mother with his own free will and choice as his father usually abused him on different occasions, due to which he was not interested to live with him. The statement U/s 164 Cr.P.C was recorded on 16.09.2019.

The alleged abductee was a student of A-Level and matured enough to understand his real issues including dispute between his parents.

7. Record further reflects that numerous criminal cases have been registered by the parties against each other as well as against family members in different courts, even litigation is pending, which further confirms that parties are locked in different kind of litigation, whereby the malafide could not be ruled out.

8. While considering the maturity of the Zimral Salman, who is 17 years and 09 month old, it is not possible that a boy of approximately 5 feet and 10 inches could have been abducted by his real mother by force, even the statement U/s 164 Cr.P.C reflects that he was not abducted, although the Investigation Officer submitted the challan U/s 173 Cr.P.C, who has been confronted regarding any incriminating evidence, which has been collected by him during the course of investigation, through which it could be justified that Zimral Salman was abducted by the petitioner, especially when the statement U/s 164 Cr.P.C was recorded by the alleged abductee by his own free will, whereby the Investigation Officer was speechless having no answer to the query made by this Court. The ingredients of offence U/s 365 PPC are not visible from the record as the alleged minor is more than 17 years of age and as such the ingredients of use of force or inducement or a wrongful confinement are lacking and bare reading of the entire case as well as the record does not reflect the commission of offence U/s 365 PPC and mere submission of challan by the Investigation Officer before the Court does not preclude this Court from exercising the jurisdiction U/s 561-A Cr.P.C. as the entire trial against the real mother for abduction of her real son is just an abuse of process of law and even the conduct of the Investigation Officer is not aboveboard, who became instrumental for causing an irreparable loss to the relationship of father and son as well as with the mother as such this type of FIR could not be registered in terms of Section 365 PPC. Reliance is placed upon reported judgment **PLD 2015**

Sindh 382 (Mst. Marium Tariq and others Vs. S.H.O, P.S Defence and others).

9. In view of above background and the facts and circumstances argued before this Court, especially the alleged minor Zimral Salman, whose age is about 17 years and 09 months, time and again confronted before this Court regarding his alleged abduction, who categorically stated that he was not abducted and he was given time alongwith his parents to settle the issues on 20.11.2019, who has again reiterated his stance that he was not abducted, therefore, in the light of the above overwhelming evidence and statement of Zimral Salman recorded U/s 164 Cr.P.C before learned Judicial Magistrate as well as before this Court, this Court has no other option but to quash the instant FIR, as no offence is made out against the petitioner (mother for kidnapping and abduction of real son Zimral Salman).

10. In view of above, instant writ petition is **ALLOWED** and F.I.R No. 333, dated 04.09.2019, registered U/s 365, PPC, P.S Sabzi Mandi, Islamabad is hereby **QUASHED**.

(MOHSIN AKHTAR KAYANI)
JUDGE

RAMZAN