

(Judgment Sheet)  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

**Writ petition No.955 of 2021**

Yasir Farooq

*Versus*

S.H.O, Police Station Golra Sharif, Islamabad and others

*Petitioners by:* M/s Raja Faheem Haider and Malik Shahbaz  
Rasheed, Advocates alongwith petitioners.

*Respondents by:* Mr. Zeeshan Malik, Advocate.

*State by:* Mr. Zohaib Hassan Gondal, Advocate.  
alongwith Adnan ASI.

*Date of decision:* 29.03.2021

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**GHULAM AZAM QAMBRANI, J.:-** This judgment shall dispose of Writ Petition No.955 of 2021 as well as Writ Petition No.1102/ 2021, as both these petitions have filed for the quashment of one and the same FIR bearing No.126/2021, dated 01.03.2021 under Sections 364-A P.P.C, registered with Police Station, Golra Sharif, Islamabad, (hereinafter referred to as the “F.I.R”).

2. Through the above mentioned petitions, filed under Article 199 of Constitution of Islamic Republic of Pakistan, 1973 read with Section 561-A Cr.P.C, the petitioner is seeking quashment of above referred F.I.R,

3. The facts, in brief, are that petitioner, Yasir Farooq was married to respondent No.3 and out of this wedlock, the spouse were blessed with a baby daughter namely Aqsa Shahzadi (hereinafter referred to as the “minor”), aged about 13 years; that differences arose between the petitioner and respondent No.3, who chose to reside at Talagang. The custody of minor remained with respondent No.3. The petitioners in both the petitions have sought the intervention of this Court for quashment of the criminal case registered with Police Station Golra Sharif, Islamabad, bearing F.I.R No.126/ 2021 dated 01.03.202, registered on the report of respondent No.3 wherein, it has been alleged that on 01.03.2021,

at about 01:20 p.m., she was at Talagang; that one of their relative namely Asad Rasheed came to her stating that father of the minor intends to meet the minor. She allowed the minor for meeting with the petitioner with the assurance that within a short time, he will bring her back, she waited for whole day, but Asad Rasheed did not return. It has been further alleged that she contacted with her husband/ petitioner for return of the minor, who also assured that he will bring the minor back to her but did not return the minor, thereafter, she came to know that the minor was brought by the petitioner to his home at Islamabad. Consequent upon which, she filed a petition under Section 491 Cr.P.C against the petitioner Yasir Farooq before the learned Court of Additional Sessions Judge, Talagang, which was dismissed vide order dated 15.02.2021, for want of jurisdiction, thereafter, she lodged above-mentioned F.I.R against the petitioners for abduction of minor, hence instant petition.

4. Learned counsel for the petitioner contends that the petitioner, Yasir Farooq, is the father of minor and her natural guardian, therefore, offence of kidnapping or abduction does not attracts against him. There is no evidence that he has taken away the minor with intent to cause grievous hurt, slavery or cause to confine secretly the minor. After registration of F.I.R, some well-wishers intervened and the petitioner has handed over the custody of minor to respondent No.3. It is further contended that the parties have settled the differences and are residing amicably as husband and wife as ordained by Almighty Allah. That the alleged Section 364-A does not attract in the matter, even Section 361 P.P.C does not attract against the petitioner being natural guardian of the minor and that the case of petitioners falls within the exception to the Section 361 P.P.C. Admittedly, respondent No.3 herself handed over the custody of the minor for visitation to the petitioner, therefore, no offence is made out against the petitioner; that further investigation of the F.I.R would amount to abuse of process of law, therefore, prayed for quashment of the impugned F.I.R.

5. On the other hand, respondent No.3 in person alongwith her counsel does not oppose the contentions of the petitioners confirming that due to some misunderstanding, the above-mentioned F.I.R was registered by respondent No.3. Learned State counsel candidly accedes the contention of learned counsel for the petitioner; that no penal provision attracts against the petitioner being father of the minor.

6. Heard arguments of the learned counsels for the parties and perused available record.

7. Perusal of the record reveals that the allegation against the petitioners was that the minor was removed from her mother's custody. From the contents of F.I.R, no offence whatsoever is made out against the petitioners even, if the allegation setup in the F.I.R is believed and accepted in toto. Kidnapping from lawful guardianship punishable under Section 363 P.P.C has been defined in Section 361 P.P.C. Under the Muslim Law, dual control of the minor children by the father and mother has been recognized. Father is a legal and natural guardian of minor and alleged removal of the minor from the custody of respondent No.3 by her father falls under exception to Section 361 P.P.C, which reads as under:-

*Exception.—This Section does not extend to the act of any person, who in good faith believes himself to be the father of an illegitimate child, or who in good faith believed himself to be entitled to the lawful custody, of such child, unless such act is committed for an immoral or unlawful purpose."*

The words '**lawful guardian**' in Section 361 P.P.C are used in a wider sense including any person lawfully interested with the care or custody of the minor. The principle of dual guardianship of the minor is by itself not repugnant to the Islamic law or the law of land. Under this concept, the guardianship of father does not cease while the minor is in custody of mother. There is nothing in law to prevent the father to agitate right of hizanat when the minor is with the mother. Father and mother cannot prosecute each other on the charge of kidnaping of their own minor children. In the case in

hand, the petitioner/ accused/ father allegedly removed the minor daughter from the custody of complainant/ respondent No.3, resulting in registration of the above mentioned F.I.R at her instance was the result of strained relations in between them. The alleged removal of minor cannot be termed as unlawful or for any immoral purpose and no motive can be attributed to him. In the case in hand, admittedly respondent, herself, passed on the custody of minor to her husband, which would not make him liable for the charge of kidnaping punishable under Section 363 P.P.C. No *mens-rea* can be attributed to the father for the abduction of his children. The parties have entered into a compromise and have settled the differences in between them and are living happy life.

8. In view of the above, keeping in view better relations in between the parties, I **allow** both writ petitions and F.I.R No.126/2021, dated 01.03.2021 under Sections 364-A P.P.C, registered with Police Station, Golra Sharif, Islamabad, is hereby quashed.

(GHULAM AZAM QAMBRANI)  
JUDGE