ABC 2025(I) 750 (TEL)
ACQUITTAL & BAIL CASES

HIGH COURT OF TELANGANA

(Smt. Juvvadi Sridevi, J.)

IA No. 2 of 2024 In CRLP No. 16187 of 2024

Decided on : 8 January 2025

DR. B. PRIYANKA - ***Petitioner(s).***

Versus

STATE OF TELANGANA & ANR. - ***Respondent(s).***

Law Covered :- (A) Bharatiya Nyaya Sanhita, 2023 – S. 137 (2) – Custody of Minor Child – Parental Guardianship Not an Offence – Criminal Proceedings Stayed – Unlawful custody of a minor child – Complaint was registered for – Held, taking a child from one lawful guardian (father) to another (mother) does not amount to an offence – The High Court relied on a precedent where it was held that a natural father taking a child from the mother's custody is not an offence under Section 361 IPC – Applied in this case, a natural mother taking her child is not unlawful – Stay granted on further proceedings. (Paras 5-9, 12-15)

Facts :- *The petitioner, the biological mother of a minor child, sought a stay on criminal proceedings registered under Section 137(2) BNS for allegedly taking the child away unlawfully. The petitioner argued that she acted in the child's best interests and that the proper remedy for custody disputes lies with the Family Court, not through criminal prosecution. The High Court of Bombay had previously ruled that transferring a child from one lawful guardian (mother) to another (father) does not constitute kidnapping. Applying the same principle, the Telangana High Court held that since both parents are lawful guardians, no offence was made out. The Court granted a stay on proceedings.*

Law of Relief :- (i) Parental Custody – No Offence When a Child Moves Between Lawful Guardians – Held, a natural parent taking custody of their child does not amount to kidnapping or an offence under Section 137(2) BNS.

(ii) Family Court Jurisdiction – Custody Disputes Not Criminal Matters – Court emphasized that disputes over child custody should be adjudicated by Family Courts, not through criminal prosecution.

(iii) Stay on Proceedings – Prima Facie No Offence Made Out – Criminal proceedings stayed as no cognizable offence was established.

***Counsel* :-** ***For Appellant(s)*:** *Mr. Sri Y. Soma Srinath Reddy, Adv.*

***For Respondent(s)*:** *Mr. Sri Jithender Rao Veeramalla, Addl. Public Prosecutor.*

***Cases Referred* :-**

High Court of Bombay in Criminal Application No. 552 of 2023 (Para 4)

JUDGMENT

***Juvvadi Sridevi, J.*:-** This application is filed by the petitioner/ accused No.1 to grant stay of all further proceedings in F.I.R. No. 1236 of 2024 of P.S. Panjagutta, registered for the offence under Section 137 (2) of Bharatiya Nyaya Sanhitha, 2023.

Heard Sri Y. Soma Srinath Reddy, learned counsel for the petitioner and Sri Jithender Rao Veeramalla, learned Additional Public Prosecutor appearing for the respondent-State.

Learned counsel for petitioner submits that the petitioner is the biological mother of the minor child and she has acted in the interest of her child out of her maternal instincts. He further submits that the remedy available to the de facto complainant for violation of custody order is to approach the Family Court, however, instead of approaching the Family Court, the de facto complainant has foisted the present complaint against the petitioner with all false allegations.

In support of his contention, learned counsel for petitioner relied on the judgment of **High Court of Bombay in Criminal Application No. 552 of 2023**, wherein, it is held that the effect of natural father taking away the child from custody of the mother in real sense amounts to taking a child from the lawful guardianship of the mother to the another lawful guardianship of the father. Natural father of the minor child is also a lawful guardian along with the mother, and therefore, father of the minor cannot be said to have committed the offence under Section 361 of IPC so as to made him punishable under Section 363 of Cr.P.C.

Hence, learned counsel prayed to grant stay of all further proceedings.

On the other hand, learned Additional Public Prosecutor opposed for grant of stay stating that specific allegations are levelled against the petitioner.

Having heard both sides and perused the material on record, it appears that the petitioner herein, who is the mother of the minor

child, has taken the minor child along with her, which amounts to taking the child to another lawful guardianship of the mother. The aforesaid judgment is squarely applicable to the facts of the present case, as in the present case, the petitioner, who is the natural mother of the minor child, is also a lawful guardian, along with the father. Therefore, there shall be stay of all further proceedings against the petitioner/accused No.1 in F.I.R. No. 1236 of 2024 of P.S. Panjagutta, till 13.02.2025.

***Result*:-** Stay granted on further proceedings in FIR No. 1236 of 2024 till 13.02.2025.