

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 2725 of 2025

Khalid Eqbal (Wrongly Mentioned in Complaint petition as Md. Khalid Iqbal), son of late Sajid, resident of At Sadar Thana Gali, aged about 57 years, P.O, P.S.-Sadar Hazaribagh & Dist.-Hazaribagh

.... Petitioner

Versus

1. The State of Jharkhand
2. Fatma Parween, w/o Khalid Eqbal, resident of Muskan Complex, Naya Bazar, P.O. & P.S.-Bank Mor, Dist.-Dhanbad

.... Opp. Parties

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

For the Petitioner	: Mr. Baban Prasad, Advocate
For the State	: Mrs. Nehala Sharmin, Spl. P.P.
For O.P. No.2	: Mr. Zaid Ahmed, Advocate

.....

By the Court:-

I.A. No.9585 of 2026

1. Heard the parties.
2. This interlocutory application has been filed with the prayer for early hearing of this criminal miscellaneous petition.
3. Since, hearing of this criminal miscellaneous petition is taken up today, hence, this interlocutory application is disposed of being infructuous.

(Anil Kumar Choudhary, J.)

Cr.M.P. No. 2725 of 2025

1. Heard the parties.

2. This Criminal Miscellaneous Petition has been filed invoking the jurisdiction of this Court under Section 528 of B.N.S.S., 2023 with the prayer to quash the entire criminal proceeding including the order dated 12.06.2024 passed by the learned Judicial Magistrate 1st Class, Dhanbad in connection with Complaint Case No. 362 of 2024, whereby and where under, learned Judicial Magistrate 1st Class, Dhanbad has found *prima facie* case for the offences punishable under Sections 323, 341 and 363 of the Indian Penal Code.
3. The allegation against the petitioner is that the petitioner being the husband of the complainant called her to Dhanbad Railway Station with their son and took away the son aged about 04 years and when the complainant went to the house of the petitioner *mar peet* was done by the petitioner and his family members.
4. On the basis of the complaint, statement of the complainant on solemn affirmation and statement of the inquiry witnesses, the learned Judicial Magistrate 1st Class, Dhanbad found *prima facie* case for the offences punishable under Sections 323, 341 and 363 of the Indian Penal Code and directed for issuance of summons.
5. Learned counsel for the petitioner relying upon the judgment of the High Court of Bombay (Nagpur Bench) in the case of **Ashish vs. State of Maharashtra & Ors.** reported in **MANU/MH/5272/2023** submits that therein, the Bombay High Court relied upon the judgment of Orissa High Court in the case of **Shri Ashok Kumar Seth vs. State of Orissa** reported in

MANU/OR/0264/2002 wherein, in paragraph no.8 the Orissa High Court has observed that the father cannot be booked for taking away his minor child from the custody of his wife because he is the natural guardian and therefore, the offence under Section 363 of the Indian Penal Code is not made out.

6. In this respect, the learned counsel for the petitioner also relied upon the judgments of High Court of Karnataka in the case of **Vipin Menon vs. The State of Karnataka & Ors.** reported in **MANU/KA/0093/1992**, High Court of Kerela in the case of **Ismail Aboobaker, Puthuparambil, Thodupuzha & Ors. vs. State of Kerala** reported in (1967) ILR 2 Ker 313 (KER) and Andhra Pradesh High Court in the case of **Md. Asif Ahammad vs. State of Andhra Pradesh** reported in **AIR Online 2023 AP 580**. It is next submitted by the learned counsel for the petitioner that the allegations against the petitioner are all false and in the absence of any bodily pain being caused to the complainant, the offence punishable under Section 323 of the Indian Penal Code is not made out. It is then submitted by the learned counsel for the petitioner that in the absence of any allegation of wrongfully restraining the complainant, the offence punishable under Section 341 of the Indian Penal Code is not made out even if the entire allegation made against the petitioner are considered to be true in its entirety. Hence, it is submitted that the prayer as prayed for by the petitioner in this criminal miscellaneous petition be allowed.

7. Learned Spl. P.P. and the learned counsel for the opposite party no.2 on the other hand vehemently opposes the prayer of the petitioner made in this criminal miscellaneous petition and submits that if the entire allegation made against the petitioner are considered to be true in its entirety then all the offences in respect of which learned Judicial Magistrate 1st Class, Dhanbad has found *prima facie* case is in fact made out. Hence, it is submitted that this criminal miscellaneous petition being without any merit be dismissed.
8. Having heard the rival submissions made at the Bar and after carefully going through the materials available in the record, it is pertinent to mention here that so far as the offence punishable under Section 363 of the Indian Penal Code relating to this case is concerned, the essential ingredients to constitute the said offence are: -
- (i) *The victim kidnapped was a minor*
 - (ii) *The victim kidnapped was in the keeping of a lawful guardian*
 - (iii) *Accused took or enticed away the victim from such keeping of the lawful guardian*
 - (iv) *Accused did so without the consent of the lawful guardian*
9. Now coming to the facts of the case, the undisputed fact remains that the petitioner being the father of the victim is the natural guardian of the victim. So, under such circumstances, the petitioner taking his own son is not the sufficient enough to constitute the offence punishable under Section 363 of the Indian Penal Code.

10. So far as the offence punishable under Section 323 of the Indian Penal Code is concerned, the essential ingredients to constitute the said offence are: -

- (i) *Accused voluntarily caused bodily pain, disease or infirmity to the victim;*
- (ii) *The accused did so with intention of causing hurt or with the knowledge that he would thereby caused hurt to the victim.*

11. Now coming to the facts of the case, there is absolutely no allegation against the petitioner of causing any bodily pain, disease or infirmity to the victim and in the absence of the same, this Court has no hesitation in holding in view of the principle of law settled by the Hon'ble Supreme Court of India in the case of **Abhishek Saxena vs. The State of Uttar Pradesh & Anr.** reported in **2023 INSC 1088**, paragraph no.9 of which reads as under:-

"9. As noted earlier, except the statement that 'they beat up me' by the complainant no material whatsoever is available on record in regard to the commission of the said offence. The incident allegedly occurred on 12.06.2016. In the recorded statement of the second respondent-complainant or in the counter affidavit filed by the first respondent there is not even a whisper that after the incident she went to a doctor or underwent any kind of treatment. Needless to say, that there is no statement – at least that injury report was prepared. In this context, it is also to be seen in respect of the incident, the FIR got registered only on 04.09.2016, that too much after the filing of petition No. 13/2016 by the appellant herein. Above all, as noted earlier, basic ingredients to constitute an offence under Section 323, IPC is lacking in the chargesheet."

that the mere allegation that *maar peet* was done will not by itself, in the absence of any allegation of causing any bodily pain, disease or infirmity to the victim is sufficient to constitute the offence punishable under Section 323 of the Indian Penal Code.

Hence, this Court is of the considered view that even if the entire allegation made against the petitioner are considered to be true in its entirety, still the offence punishable under Section 323 of the Indian Penal Code is not made out.

12. So far as the offence punishable under Section 341 of the Indian Penal Code is concerned, the essential ingredients to constitute the said offence are: -

- (i) *Accused obstructed a person;*
- (ii) *He did it voluntarily;*
- (iii) *It prevented such person from proceeding in certain direction in which he had the right to proceed.*

13. Now coming to the facts of the case, there is no allegation against the petitioner of obstructing the complainant from proceeding in certain direction in which she had the right to proceed and in the absence of the same, this Court is of the considered view that even if the entire allegation made against the petitioner are considered to be true in its entirety, still the offence punishable under Section 341 of the Indian Penal Code is not made out.

14. Because of the discussions made above, this Court is of the considered view that even if the entire allegation made against the petitioner are considered to be true in its entirety, still none of the offences in respect of which *prima facie* case has been found out by the learned Judicial Magistrate 1st Class, Dhanbad is made out. Hence, continuation of the criminal proceeding against the petitioner will amount to abuse of process of law. Therefore, this is a fit case where the entire criminal proceeding including the

order dated 12.06.2024 passed by the learned Judicial Magistrate 1st Class, Dhanbad in connection with Complaint Case No. 362 of 2024 be quashed and set aside *qua* the petitioner.

15. Accordingly, the entire criminal proceeding including the order dated 12.06.2024 passed by the learned Judicial Magistrate 1st Class, Dhanbad in connection with Complaint Case No. 362 of 2024 is quashed and set aside *qua* the petitioner.

16. In the result, this criminal miscellaneous petition is allowed.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 21st July, 2026
AFR/Gunjan/-

Uploaded on 22/07/2026