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**ASSIGN
BUSTER**

Section 98 of the Code deals with the power to compel restoration of abducted females. It provides that upon complaint made on oath of the abduction or unlawful detention of a woman, or a female child under the age of eighteen years, for any unlawful purpose, a District Magistrate, sub-Divisional Magistrate or Magistrate of the first class may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary. It is only wrongful confinement which is punishable under the Indian Penal Code and a search-warrant can be issued for the search of such person.

The place and name of person, quoted in the warrant are merely enabling. They do not confine the process of search, nor is it delegatory for the Magistrate to hold a detailed enquiry before the issue of warrant. However, it is necessary that the Magistrate should examine the facts and apply his mind before issuing search warrant. If person is found in the course of search he shall be forthwith taken before a Magistrate who shall pass appropriate order in the case. In *Harihar v. State of U. P.*

, it was held that where a husband keeps his minor wife at his house, even though against her wish, he cannot be said to have been acting wrongly and thereby guilty of wrongful confinement. An application for the issue of search-warrant under section 97 in respect of the wife is not, therefore, maintainable and when the wife is produced before the Magistrate in execution of the search-warrant, the wife is to be handed over to the

husband unconditionally and not subject to his furnishing security. In Lokumal v.

Vivek, it was held that when the person confined is an adult woman who is not willing to go with her husband, the Magistrate cannot compel her to go with him and can set her free to go anywhere at her will. Section 98 of the Code is applicable only where there is a complaint before him on oath of the abduction or unlawful detention of a woman or of a female under the age of 18 years. Under this section, both the detention and the purpose must be unlawful. Detention of a minor girl by a person not legally entitled to her custody, against will of her guardian, is unlawful within the meaning of this section. The detention of a girl by the father in his house against the will of her husband does not amount to unlawful detention, unless it is shown that the detention was contrary to the wish of the girl. If a woman is residing with her relatives who are aiding her in endeavouring to procure a divorce, such detention is not unlawful. The natural mother is the legal guardian and is entitled to the custody of the child.

The stepmother has no right whatsoever to that custody unless she gets herself appointed by the court as a guardian under the Guardians and Wards Act. The detention of the child by the stepmother is, therefore, unlawful within the meaning of section 98.