

Wasif Vs. State

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Court : Delhi

Decided On : May-05-2014

Judge : Veena Birbal

Appellant : Wasif

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision: May 5th, 2014 + CRL.REV.P. 45/2014 WASIF Petitioner Through: Mr. N. Hariharan, Sr. Adv. with Mr. Amit Singh Chauhan & Mr. Vaibhav Sharma, Adv. versus STATE Respondent Through: Ms. Jasbir Kaur, APP for State. CORAM: HON'BLE MS. JUSTICE VEENA BIRBAL VEENA BIRBAL, J.

1. By way of this revision petition, a challenge has been made to the order dated 5th October, 2013 whereby the Id.ASJ has ordered for framing of a charge u/s 363 IPC against the petitioner.

2. Briefly the facts relevant for the disposal of the present petition are as under:Petitioner has been charge sheeted by the SHO of P.S. Chandni Mahal for having committed offences punishable under section 363/366 IPC. The allegations against the petitioner are that on 27.4.2013, he had kidnapped prosecutrix d/o Khursheed from the lawful guardianship of her parents with the intention to induce/compel her to marry him. The FIR was registered on the statement of

Smt.Khursheed wherein she has alleged that on 27.4.2013 at about 7.15 am her daughter i.e., the prosecutrix aged about 15 years had left her home for Sarvodhya School, Bulbuli Khana, Asaf Ali Road, Delhi. Thereafter, she did not return back. A search was made for prosecutrix but she could not be found. The complainant suspected that her daughter had been flattered and taken away by the petitioner aged 24 years and request was made to the police to take action. On the basis of her statement, FIR u/s 363 IPC was registered. Thereafter search was made for the prosecutrix as well as the petitioner. On 7th May, 2013 on the basis of secret information, IO along with Constable Virat and mother of the prosecutrix searched at Brahm Puri where both were found standing at a bus stop. Both of them were apprehended by the I.O. During the course of investigation, statement of prosecutrix u/s 161 Cr,P.C was recorded and thereupon section 366 IPC was added in the case. During investigation statement of the prosecutrix u/s 164 Cr.P.C was recorded by the Id.M.M. After completion of investigation, charge sheet u/s 363/366 IPC was filed.

3. Before the Id.ASJ, relying on the statement of prosecutrix under Section 164 Cr.P.C., learned counsel for the petitioner has contended that the prosecutrix had stated that she had gone with the petitioner of her own consent, as such no charge u/s 363/366 IPC is made out against the petitioner. The Id.ASJ has observed that on the date of occurrence i.e., 27.4.2013, prosecutrix was 15 years old and it is admitted position that she had gone with the petitioner without the consent of her parents, as such, ingredients of kidnapping are there. Accordingly, Ld. ASJ has held that prima facie case u/s 363 IPC is made out against the petitioner. However, about the other allegations, under Section 366 IPC, Id.ASJ has noted that from the statements of prosecutrix under Sections 161 Cr.P.C. and 164 Cr.P.C, there is nothing to suggest that prosecutrix was kidnapped by the petitioner with an intention that she may be compelled to marry him or there was any false promises or inducement given to the prosecutrix for marriage or that she was compelled by the petitioner or by any one else to marry the petitioner. Accordingly, Id. ASJ has taken a view that prima facie no offence u/s 366 IPC is made out against the petitioner and the petitioner has been discharged from the said offence. Considering that the charge u/s 363 IPC is made out against the petitioner which is triable by a Magistrate, Id.ASJ has directed that the file be sent

to the court of Id.Chief Metropolitan Magistrate for transfer it to the court of competent jurisdiction. Aggrieved with the same, the present revision petition is filed.

4. Learned senior counsel for the petitioner has contended that prosecutrix has not supported the case of the prosecution as regards allegations of kidnapping are concerned. It is contended that even charge u/s 363 IPC is not made out against the petitioner. It is contended that as per statement of prosecutrix recorded under Section 164 Cr.P.C, she has alleged that on 27.4.2013 she had gone to the school from her home. She bunked the school and voluntarily gone to Connaught Place with her friend Wasif i.e., the petitioner. She changed her school dress at Connaught Place and boarded a bus for Jaipur with him. She has further alleged that after reaching at Jaipur, they booked a room in a hotel where they lived for a day and thereafter roamed around and indulged in shopping. Thereafter they had gone to Wasifs aunt house and stayed there and returned to Delhi from Jaipur on 5.5.2013 and stayed at Seelampur in the house of a friend of petitioners mother. Learned senior counsel relying upon the judgment in S.Vardarajan vs. State of Madras:1965 SCR (1) 243 has contended that since prosecutrix had gone of her own consent even charge u/s 363 IPC is not made out against the petitioner. It is contended that prosecutrix had left the parental home of her own.

5. On the other hand, learned APP has contended that prosecutrix was minor i.e., she was 15 years of age at the time of occurrence and it is admitted position that no consent of the parents of prosecutrix was taken. It is the petitioner who had taken her from Delhi to Jaipur where, as per prosecution case, they had stayed for about 9 days and thereafter were apprehended at Delhi. It is contended that it is the petitioner who had taken the minor girl out of keeping of lawful guardianship without the consent of her guardians. It is submitted that ingredients of section 361 IPC are present in the present case and there is no illegality in the impugned order.

6. I have considered the submissions made and perused the material on record.

7. As per material on record, prosecutrix was 15 years of age on the day of alleged incident. As per allegations, no consent of the parents of prosecutrix was taken for

taking the prosecutrix from Delhi to Jaipur. Section 361 IPC reads as under:

Kidnapping from lawful guardianshipwhoever takes or entices any minor under 16 years of age if a male, or under 18 years of age if a female or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian is said to kidnap such minor or person from lawful guardianship.

8. The object of Section 361 IPC is to protect the vulnerable minors and to protects the rights of the guardians. The Supreme Court in State of Haryana vs. Raja Ram: AIR 1973 SC819 has held that:

.....
..... The object of this section seems as much to protect the minor children from being seduced for improper purposes as to protect the rights and privileges of guardians having the lawful charge or custody of their minor wards. The gravamen of this offence lies in the taking or enticing of a minor under the ages specified in this section, out of the keeping of the lawful guardian without the consent of such guardian. The words "takes or entices any minor out of the keeping of the lawful guardian of such minor" in S.361, are significant. The use of the word "keeping" in the context connotes the idea of charge, protection, maintenance and control: further the guardian's charge and control appears to be compatible with the independence of action and movement in the minor, the guardian's protection and control of the minor being available, whenever necessity arises. On plain reading of this section the consent of the minor who is taken or enticed is wholly immaterial: it is only the guardian's consent which takes the case out of its purview. Nor is it necessary that the taking or enticing must be shown to have been by means of force or fraud. Persuasion by the accused person which creates willingness on the part of the minor to be taken out of the keeping of the lawful guardian would be sufficient to attract the section."

9. In Parkash v. State of Haryana; 2004 Cri LJ595 a two Judge Bench of the Supreme Court held that Section 361 I.P.C is designed to protect the sacred right of the guardians with respect to their minor wards.

10. The contention of Id.Senior Counsel relying upon S.Vardarajans case (supra) has been dealt with by the Id.ASJ.

The relevant finding of the Id.ASJ in this regard is as under:

This arguments of Ld. counsel for accused are good arguments for the academic point of view. But as far as the Law is concerned, the court is bound with the provisions of Law. Till today, u/s 361 IPC, the age of minor female for considering the case of kidnapping is below 18 years. Since prosecutrix in this case was 15 years of age on the date of alleged incident, I am of the opinion that prima facie case is made out against the accused u/s 363 IPC.

There is no illegality in the finding given by Ld. ASJ.

Further, in S. Vardarajans case (supra) the facts are different. There the prosecutrix was at the verge of attaining majority and was a college going girl. The entire evidence was recorded in the said case. The parties therein had also entered into agreement of marriage and getting the same registered with SubRegistrars office (thinking that was sufficient in law to make them man and wife).

11. In the present case, as per prima facie material on record, it is the petitioner who had taken the prosecutrix, a minor girl, from Delhi to Jaipur on 26.4.2013 where they had allegedly stayed for about 9 days. After returning to Delhi, petitioner had kept her in his friends jhuggi. The parents were searching for their daughter. Prima facie, the petitioner had taken away the prosecutrix, a minor girl, out of the keeping of the lawful guardians without their consent. The impugned order is passed by the Id. ASJ after considering the material on record. It is settled position of law that the High Court shall interfere with the charge framed only if there is glaring injustice on the face of it. In the present case, prima facie, the ingredients of section 361 IPC are established. No illegality is seen in the impugned order which calls for interference of this court.

12. The revision petition is dismissed. Trial court record be sent back forthwith. CRL.M.A. No.922/2014 (stay) In view of above order, no orders are required on

the present application. The same stands disposed of accordingly. VEENA
BIRBAL, J th May 5 , 2014 ssb

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