

Amarjeet Kumar Vs. State of Bihar

Amarjeet Kumar Vs. State of Bihar

SooperKanoon Citation : sooperkanoon.com/130257

Court : Patna

Decided On : Apr-11-2008

Judge : Abhijit Sinha, J.

Acts : Indian Penal Code (IPC) - Sections 34, 342, 365, 366A and 376; Code of Criminal Procedure (CrPC) - Sections 161 and 164

Appeal No. : Cr. Misc. No. 9104 of 2007

Appellant : Amarjeet Kumar

Respondent : State of Bihar

Advocate for Def. : Jharkhandi Upadhyay, A.P.P., Ashok Kumar Jha, Adv. for Opp. Party No. 2

Advocate for Pet/Ap. : Vijay Kumar Sinha, Adv.

Disposition : Application dismissed

Judgement :

Abhijit Sinha, J.

1. The petitioner, who is the sole F.I.R. named accused in S. Tr. No. 1028 of 2006, arising out of Gardanibagh (Shastrinagar) P.S. Case No. 189/06, has prayed for quashing of the order dated 16.10.2006 passed therein by Sri Kamal Kishore

Sinha, learned Presiding Judge, Fast Track Court.-III, Patna, whereby he has framed charges against the petitioner for offences under Sections-365, 366(A), 376, 342/34 I.P.C.

2. According to the prosecution case, one B.K. Jha submitted a written report on 19.2.2006 before the Officer Incharge of Shastrinagar Police Station, inter alia, alleging that on 14.2.2006 he had lodged a Sanha No. 145/14 about the missing of his minor daughter, Amrita, who had not returned back to the house and that he had come to know from a reliable source that one Amarjeet, a resident of Village-Dehuli, had kidnapped his daughter with the help of other persons as a few months preceding thereto Amrita had slapped him for eve teasing and Amarjeet had extended threat to teach her a lesson. It has also been stated that Amrita had disclosed about the occurrence to her family members, who had taken it lightly and had told her to go to College without any fear. It has also been stated that Amarjeet was a frequent visitor to the house of his neighbour and was also seen roaming in the Mohalla with others, but the informant did not pay any heed thereto. It has further been stated that when the informant came to know that the kidnapper of his daughter was Amarjeet, he went to the house of Amarjeet with co-villagers, Kumud Kumar Jha and Kamal Jha where Amarjeet was found absconding from the house after locking the same. The informant has further stated that he gathered from the villagers of Amarjeet's Village that on the relevant date, Amarjeet had come to the village with a girl and on that very night he had left the village with her.

3. It has been submitted on behalf of the petitioner that he is innocent, has committed no offence and has been falsely implicated in this case merely on the basis of suspicion. It has also been submitted that the petitioner was neither arrested at the spot nor any incriminating article was recovered from his possession. Some grievance has also been raised regarding the delay in filing the written report inasmuch as whereas the occurrence allegedly took place on 14.2.2006 the case was not registered till 18.2.2006 and for the same no explanation has been given. It has also been submitted that from perusal of letter dated 8.2.2006 allegedly written by the victim girl addressed to the petitioner (Annexure-2), it appears that the girl herself prevailed over the petitioner for taking

her away from her house and called him on 13.2.2006 near Danapur Railway Station, which only goes to show that the girl was a consenting party and had left with the petitioner of her own free-will and volition.

4. The learned Counsel for the petitioner also sought to submit that from perusal of the Certificate of marriage, which is Annexure-3 to the application, it would appear that the marriage of the victim girl was solemnized with the petitioner on 5.1.2006 and the application for registration of marriage was already filed on 9.1.2006 before the Marriage Officer, Raghunathpur, Purulia and the marriage was registered on 21.2.2006, and as such, the allegation of kidnapping as attributed to the petitioner was non est. It has further been submitted that from perusal of Complaint Case No. 558(C) of 2006 filed by the Victim girl against her parents and brother, a copy whereof is Annexure-4 to the application, it would appear that she herself stated in the Complaint Petition that she had selected Amarjeet Kumar as her husband, but her family members had opposed the same and had created obstacles. It would also appear that she had prayed for proper security for herself from her parents, brother and other family members and after considering the same the Court was pleased to send the victim girl to remand home on 1.3.2006.

5. It was also sought to be submitted on behalf of the petitioner that the Investigating Officer of the case had requested the Court for permission to interrogate the victim girl in remand home, which was allowed and, thereafter, a petition was filed for recording her statement Under Section 164 Cr.P.C., wherein she has narrated a new story only to save herself from the allegations levelled by her in Complaint Case No. 558 (C) of 2006, which only goes to show that her statement Under Section 161 Cr.P.C., as also Under Section 164 Cr.P.C. were made under threat and pressure of her parents and other family members. It was also sought to be pointed out that whereas the victim girl in her statement Under Section 164 Cr.P.C. gave the date of her alleged kidnapping as 13.2.2006, the informant in his written report has given the date as 14.2.2006. Relying on the statement Under Section 164 Cr.P.C., it was further submitted that there is no allegation of her being subjected to rape or sexual intercourse by the petitioner, and as such, a charge Under Section 376 I.P.C. was not sustainable. It was also submitted relying on the Medical report (Annexure-6/1) that since the age of the

victim girl was assessed between 17 and 19 years a charge Under Section 366(A) I.P.C. was also not sustainable.

6. The learned Counsel for the petitioner further sought to submit that it would appear from the F.I.R, the statement of the victim girl and marriage certificate that she had not been confined forcibly, rather she had married with the petitioner before the Marriage Registrar and later had appeared before the Court of Chief Judicial Magistrate, Patna and sought protection from her parents and family members and in that view of the matter, a charge Under Section 365 I.P.C. was also not sustainable.

7. The learned Counsel also raised a grievance of the petitioner not being heard at the time of framing of charge on 16.10.2006 when he was in custody.

8. Opposing the prayer of the learned Counsel for the petitioner, the learned Counsel for the Opp.Party No. 2 sought to raise a preliminary objection to the maintainability of the prayer of the petitioner inasmuch as six out of the eight prosecution witnesses including the victim girl and the doctor had been examined by the trial court and in that situation, it would not be appropriate for this Court to interfere with the order framing charges at this stage.

9. It was also submitted by the learned Counsel for the Opp. Party No. 2 that even otherwise it is the well settled law that where there is slightest suspicion, charge must be framed and in the instant case since there was sufficient materials against the petitioner, charges against him as stated above have been framed and this is not the appropriate stage for the same to be questioned. Once a charge is framed, it can only end in conviction or acquittal. Referring to the statements of the victim girl Under Section 164 Cr.P.C., it was submitted that it would be apparent that the petitioner had deliberately committed the offences, as alleged against him.

10. Be that as it may, I am not inclined to interfere with the impugned order framing charges against the petitioner primarily on two counts. Firstly, because most of the prosecution witnesses have already been examined by the trial court and, secondly, because the submissions advanced by the learned Counsel for the petitioner are his defence, which cannot be looked into in a proceeding Under

Section 482 Cr.P.C. The petitioner at the trial has liberty to cross-examine the witnesses on the issues raised by him in course of his submission and can also support his defence by leading evidence on his behalf.

11. In that view of the matter, I am not inclined to interfere with the order framing charges. Accordingly there is no merit in this application which is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com