

Shobhanu Vs. Kishnu and ors.

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Court : Himachal Pradesh

Decided On : Aug-20-1954

Reported in : AIR1954HP86

Judge : Ramabhadran, J.C.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Section 369

Appeal No. : Criminal Revn. No. 34 of 1954

Appellant : Shobhanu

Respondent : Kishnu and ors.

Advocate for Pet/Ap. : R.N. Malhotra, Adv.

Judgement :

ORDER

Ramabhadran, J.C.

1. The petitioner, Shobhanu, filed a complaint under Section 366, I. P. C., against the respondents, alleging that they had abducted his wife, Mt. Achari, for purposes of illicit intercourse. The learned trial Magistrate found that Mt. Achari went to the accused of her own free will. Consequently, in his opinion, the element of abduction was absent. As regards the other offence, namely, that committed by Kishnu in detaining Mt. Achari for purposes of illicit intercourse, the Magistrate

pointed out that the detention was in a village in Pepsu, which was outside his jurisdiction. He, therefore, discharged the accused persons and left it open to the complainant to seek his remedy, if any, in Pepsu Courts. Against that order of discharge, Shobhanu went up in revision to the learned Sessions Judge of Mahasu, but he was unsuccessful there.

He then came in revision to this Court. The revision petition was fixed for 14-7-1954 for preliminary hearing. At the express request of the learned counsel for the petitioner, hearing was adjourned to 21-7-1954. That day, I waited till 2-45 P.M., but the petitioner's counsel did not turn up, nor did he make any request for adjournment. I, thereupon, went through the judgment of the learned Sessions Judge and came to the conclusion that there was no ground for interference in revision. Consequently, the revision petition was rejected. On the following day, namely, 22-7-1954, Shobhanu put in a petition purporting to be under Sections 369, 435, 436, 439 and 561A, Cr. P. C. 'Inter alia', it is stated therein that the petitioner's counsel's clerk, by mistake, noted in the diary that the revision petition would be taken up on 22-7-1954, instead of 21-7-1954. An affidavit, in support of this allegation, has been filed by Sri K. R. Chowdhry clerk of Sri R. N. Malhotra, Advocate. I have heard learned counsel for the petitioner.

2. As already stated, this Court's order dated 21-7-1954, was passed after going through the judgment of the learned Sessions Judge. As was pointed out by me in--'Tota Ram v. State', AIR 1954 Him-P 60 (A), I could review my order of 21-7-1954, if at all, only on the ground that it overlooked any mandatory provision of the law, or that it was passed without jurisdiction. Learned counsel suggested that the Courts below have erred, in thinking, that they had no jurisdiction to try the accused.

He drew my attention to the provisions of Section 181(4), Cr. P. C., whereby the offence of kidnapping or abduction may be enquired into or tried by a Court within the local limits of whose jurisdiction the person kidnapped or abducted was kidnapped or abducted or was conveyed or concealed or detained. It is urged, therefore, that the trial Magistrate, from whose jurisdiction the girl was kidnapped, was competent to try the accused. A perusal of the Magistrate's judgment,

however, shows that he did not believe that the girl was kidnapped. The learned Sessions Judge has in his order, pointed out that Mt. Achari had stated that she went to Kishnu's house of her own accord. He has further expressed his view that there was no evidence to show that any of the accused persons had kidnapped the woman. Under these circumstances, it cannot be said that the Courts below have overlooked any mandatory provision of the law involving jurisdiction, i.e., place of trial.

3. In the next place, it was contended that Mt. Achari was a minor and, therefore, her consent is no consent in the eye of law. This point was argued before the Sessions Judge. He has pointed out that Mt. Achari gave her age as 20 years. No documentary evidence was produced by the complainant to prove her date of birth. Under these circumstances, the learned Sessions Judge was obliged to hold that Achari's age was not proved. He has also remarked significantly that, at the very first hearing, the complainant was asked to produce a copy of the relevant entry in the birth register of Mt. Achari, but he failed to do so. The petitioner has tried to show that it was the duty of the trial Court to call for evidence regarding the age of the girl. The onus of proof was on the complainant and it could not be shifted to the Court.

4. All circumstances considered, I cannot see that there are grounds for re-opening the matter, which was disposed of by this Court's order, dated 21-7-1954. The result is: I reject the petition.

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