



2022 PLRonline 0607

[418506]

SUPREME COURT OF INDIA

Present : S. ABDUL NAZEER; VIKRAM NATH, JJ.

MAFAT LAL v. THE STATE OF RAJASTHAN

CRIMINAL APPEAL NO(s).592 OF 2022 (Arising out of SLP (CRL.) No(s). 1806 of 2021)

Indian Penal Code, 1860, Section 363, 366 - Kidnapping would necessarily involve enticing or taking away any minor under eighteen years of age if a female for the offence under Section 363 IPC - Abductee had clearly stated that she was neither taken away nor induced and that she had left her home of her own freewill - Section 366 IPC would come into play only where there is a forceful compulsion of marriage, by kidnapping or by inducing a woman - This offence also would not be made out once the the abductee has clearly stated that she was in love with the accused and that she left her home on account of the disturbing circumstances at her parental home as the said relationship between them was not acceptable to her father and that she married accused on her own free will without any influence being exercised by the accused.

A complaint was filed by the father alleging his minor daughter was abducted by appellant No.1 in 2005, FIR was registered, and investigation began but failed to locate the girl or the accused. Chargesheet was filed against appellant No.1 . - In 2020, appellants filed a petition under Section 482 CrPC to quash the FIR, stating they were in a consensual relationship and married since 2006 and that appellant No.2 left home voluntarily due to family issues and was not abducted. High Court dismissed the petition focussing on the minor status of the girl and the appellant's evasion of law. Appellant

No.2 reiterated her marriage by choice. No purpose in continuing the trial as charges of kidnapping and abduction under Sections 363 and 366 IPC were not substantiated. No fruitful purpose would be served by relegating the matter for conducting the trial as the same would not be conducive for either of the appellants. It would be a futile exercise.

(Arising out of impugned final judgment and order dated 09-12-2020 in SBCRLMP No. 591/2020 passed by the High Court of Judicature for Rajasthan, Bench at Jaipur)

For Petitioner(s) Ms. Mayuri Raghuvanshi, AOR Mr. Vyom Raghuvanshi, Adv. Ms. Purvat Wali, Adv. Mr. Deepankur Sondhi, Adv. Mr. Kaustubh Punj, Adv. Ms. Shivani Aggarwal, Adv.

For Respondent(s) Ms. Gurkirat Kaur, Adv. Mr. Milind Kumar, AOR

J U D G M E N T

Vikram Nath, J. - (28.03.2022) - Leave granted.

2. This appeal questions the correctness of the judgment and order dated 09.12.2020 passed by the High Court of Rajasthan, Bench at Jaipur in S.B. Criminal Misc. (Petition) No. 591 of 2020 whereby the High Court dismissed the petition under Section 482 of the Code of Criminal Procedure, 1973 [In short "CrPC"] for quashing of First Information Report [In short "FIR"] No. 45 of 2005 dated 23.05.2005 registered with Police Station Phulera, District Jaipur under Sections 363 and 366 IPC.

3. Relevant facts giving rise to this appeal are that one Prahalad Dan gave a written complaint stating that his minor daughter had been abducted by the appellant no.1 on 22.05.2005 at about 2.30PM. On the said complaint FIR No. 45 of 2005 was registered at Police Station Phulera, District Jaipur under Sections 363 and 366 IPC. Investigation was commenced but the whereabouts of the missing girl could not be traced. Despite best efforts when the abducted girl and the accused could not be traced, the investigating officer, after recording the statements of the complainant and the others, submitted a chargesheet against the appellant no.1 under the aforesaid Sections and, further, requested the court to initiate the proceedings under Section 299 CrPC.

4. The investigating officer also submitted chargesheet against the father of the appellant, namely, Banna Lal under Sections 363, 366 and 120B IPC. On the basis of the said chargesheet Banna Lal was put to trial and Regular Criminal Case No. 23 of 2010 was registered. The Additional District and Sessions Judge, Sambhar Lake, District Jaipur vide judgement and order dated 03.09.2011 came to the conclusion that the charges could not be proved against the accused Banna Lal of being involved in any manner in the alleged abduction of the daughter of the complainant, but rather he himself made efforts for searching his son and the abductee. Accordingly, Banna Lal was acquitted of all the charges.

5. In the year 2020, the appellant along with the abductee Seema Parewa filed a petition under Section 482 CrPC before the Rajasthan High Court which was registered as S.B. Criminal Misc. Petition No. 591 of 2020 praying for quashing of the FIR No. 45 of 2005 and all proceedings arising therefrom. In the said petition it was stated that the appellant and the abductee (appellant No. 1 and 2 respectively) were well known to each other and were into deep love affair, which relationship was not acceptable to the father of the abductee. Under compelling circumstances, both of them parted from their families in the year 2005 and later got married on 25.12.2006. It was, further, stated that report was submitted under Section 173(2) CrPC and a request for invoking Section 299 CrPC was made by the investigating officer. The matter is still pending before the Trial Court against the appellant and coercive steps were being taken. It was, further, stated that almost 15 years have passed, the appellant and the abductee were living happily married and had also been blessed with a boy on 27.02.2014. It is further stated that the abductee was never victimized, abducted nor kidnapped but on her own volition left her parental home on account of the unpleasant and disturbing circumstances created by her father. It is also stated that the abductee was 17 years of age at the time when she left her home on her own volition and that the appellant had no role to play in her parting with her family.

6. The High Court although records all such facts, appears to have been swayed with the fact that the abductee was a minor at the time when she left her home and that the appellant had evaded the investigation and had been successful in keeping away from the process of law for several years. The High Court further proceeded on the assumption that the appellant had actually kidnapped/abducted the minor daughter of the complainant.

7. Before this Court, also the abductee has joined the accused as appellant No.2. Once again similar stand has been taken as was taken before the High Court. Both the appellants have filed separate affidavits. Appellant No.2 has specifically stated before the High Court as also before this Court that she had left her parental home on her own free volition. The appellants are married since December 2006 and have been living happily. They have also been blessed with a son in the year 2014 who would now be 8 years old. No fruitful purpose would be served by relegating the matter for conducting the trial as the same would not be conducive for either of the appellants. It would be a futile exercise. Kidnapping would necessarily involve enticing or taking away any minor under eighteen years of age if a female for the offence under Section 363 IPC. In the present case, the abductee had clearly stated that she was neither taken away nor induced and that she had left her home of her own freewill. Section 366 IPC would come into play only where there is a forceful compulsion of marriage, by kidnapping or by inducing a woman. This offence also would not be made out once the appellant no. 2 the abductee has clearly stated that she was in love with the appellant no.1 and that she left her home on account of the disturbing circumstances at her parental home as the said relationship was not acceptable to her father and that she married appellant no.1 on her own free will without any influence being exercised by appellant no.1.

8. Considering the overall facts and circumstances of this case, the ends of justice would be best secured by quashing the FIR and all consequential proceedings that arise

therefrom. Accordingly, the appeal is allowed. The impugned judgement and order dated 09.12.2020 of the High Court of Rajasthan is set aside and the entire proceedings arising out of the FIR No. 45 of 2005 dated 23.05.2005 registered with Police Station Phulera, District Jaipur under Sections 363 and 366 IPC and all consequential proceedings are hereby quashed.

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