

(2021) 11 J&K CK 0050

In the Jammu And Kashmir High Court

Case No : Criminal Miscellaneous Cases No. 228 Of 2014(O&M)

Ajay Kumar

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 26-11-2021

Acts Referred:

Immoral Traffic (Prevention) Act, 1956 — Section 3, 4, 5, 7
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 109, 363, 366, 366A, 376, 493
Code Of Criminal Procedure, 1973 — Section 164A

Citation : (2021) 11 J&K CK 0050

Hon'ble Judges : Rajnesh Oswal, J

Bench : Single Bench

Advocate : Vijay Gupta, Satinder Gupta

Final Decision : Dismissed

Judgement

Rajnesh Oswal, J

1. The petitioner has filed the present petition for quashing of order dated 31.05.2014 passed by the court of learned Additional Sessions Judge Doda (hereinafter referred to as the trial court), by virtue of which the charges against the petitioner have been framed for commission of offences under section 5 of PITA and sections 366/376/493 RPC.

2. The order dated 31.05.2014 passed by the trial court, has been impugned on the following grounds:

a. That as per the statement of the prosecutrix, no offence is made out against the petitioner particularly when the prosecutrix has not deposed anything about having any sexual relationship with the petitioner and as such the continuance of the proceedings shall amount to abuse of process of law.

b. That as per the prosecution, the prosecutrix was handed over by one Praveen to the petitioner but said Parveen has neither been cited as witness nor arrayed

as an accused in the aforesaid challan, therefore, the petitioner cannot be convicted and the continuance of the trial shall be an exercise in futility.

c. That on 01.05.2009, the Police raided the house of respondent No. 2 at Trikuta Nagar Jammu and arrested respondent No. 2 and 3, petitioner and one more unknown person. The FIR number 112/2009 under sections, 3, 4, 5 and 7 of the PITA was registered at Police Station Bahu Fort and challan was presented against the petitioner and others. The petitioner was discharged by the court of learned Special Municipal Magistrate Jammu vide order dated 23.10.2013. Therefore, there cannot be two FIRs for the same occurrence and as such, the petitioner is required to be discharged particularly when the allegations are similar in nature.

3. Mr. Vijay Gupta, learned counsel for the petitioner argued that in view of the statement of the prosecutrix, no offence is made out against the petitioner. He laid stress that person, namely, Praveen has neither been cited as witness nor has been arrayed as accused, who had allegedly handed over the custody of the prosecutrix to the petitioner and as such, the petitioner cannot be convicted for commission of above mentioned offences. He further argued that on similar allegations, the petitioner was discharged by the court of learned Special Municipal Magistrate, therefore, he cannot be put to trial again.

4. Per contra, Mr. Suneel Malhotra learned GA vehemently argued that the prosecutrix was minor and the petitioner had taken her to Delhi where she resided with him for few months and thereafter, he handed over the custody of the prosecutrix to respondent No. 2 and as such at this stage there is sufficient material against the petitioner necessitating the framing of charges against the petitioner.

5. Heard and perused the record.

6. Brief facts necessary for the disposal of the present petition are that the complainant had admitted the prosecutrix in a school at Bhaderwah. On 24th of March 2008, in the School his daughter developed some eye problem and visited her house. After treatment by Doctor, the complainant again sent his daughter to school on 25.03.2008 through his wife, who handed over her custody to one Posha Begum. On same day, he received a message from School that his daughter had disappeared from the School and concerted efforts to find her were made but she could not be found. As such the complainant lodged the missing report and suspected involvement of Ghulam Mohd in kidnapping of his daughter. On receipt of this information, FIR No. 42/2008 under section 363/109 RPC was registered. During the course of investigation, one Mst. Zareena Bano was interrogated and it was found that prosecutrix obtained phone from her and contacted respondent No. 2, who was her close relative. Shagufta Praveen was also interrogated, who disclosed that she had received a telephonic call from Zareena Bano but she did not admit that prosecutrix had come to her. On 01.05.2009, the Police raided the house of respondent No. 2 at Trikuta Nagar

Jammu and arrested the petitioner, respondent No. 2, 3 and one more person. The prosecutrix was also recovered and her statement was recorded under section 164-A Cr.P.C. The medical examination of the prosecutrix was also conducted. After the conclusion of the investigation, the Investigating Officer proved the offences under sections 376/366-A/363/109 RPC against respondent No. 2, offences under section 376/109 RPC against accused Bimla Devi, offences under section 379/493 RPC against petitioner and offences under section 366-A/376/109 RPC against accused Chauhan. Besides others, accused including Parveen were also found involved in the offences but could not be located. In the charge-sheet, it has been stated that as and when they are found and identified by the prosecutrix the separate challan shall be filed against them. The prosecutrix in her statement recorded under section 164-A Cr.P.C. deposed that the respondent No. 2 asked her to come to Jammu and on her insistence, she reached Jammu. At Jammu bus stand, respondent No. 2 took her to a house at Gandhi Nagar Jammu. When the respondent No. 2 got information that her father was reaching Jammu for tracing her, she handed over her custody to Parveen, who took her to Railway Station Jammu and handed over her custody to accused Ajay Kumar. Ajay Kumar took her to Delhi and contracted marriage with her. She remained with petitioner for one month without marriage and after marriage remained in Delhi for five more months. On the asking of the prosecutrix, petitioner contacted respondent No. 2, who told petitioner to bring the prosecutrix to Jammu for a couple of days. Thereafter, she was brought to Jammu by the petitioner and he left her with the respondent No. 2. The respondent No. 2 kept her for two days and thereafter she was sent with some boys, who took her to Jhajhar Kotli and they committed rape upon her and thereafter she was dropped at the house of respondent No. 2.

7. The contention of the petitioner that no offence is made out against him in view of the statement of the prosecutrix is bereft of any merit. Admittedly, the prosecutrix was 13 years of age and the petitioner knowingly that she was not major took her along with him to Delhi, where he allegedly solemnized marriage with her and even remained with her for one month without marriage. The petitioner after enjoying the company of the minor prosecutrix left her at the disposal of the respondent No. 2. More so, the petitioner was arrested from the residence of respondent No. 2 where she was running a brothel and the petitioner had handed over the custody of the prosecutrix to the respondent No.2. These circumstances are sufficient enough to put the petitioner to trial.

8. From the perusal of the charge sheet, it transpires that the investigating officer has stated in the charge-sheet that the whereabouts of the other accused including Parveen could not be found and as soon as they are found and identified by the prosecutrix, the supplementary charge-sheet shall be filed against the other accused. So the contention of the petitioner that Praveen Kumar has not been arrayed as an accused or cited as a witness is also wrong and contrary to record and as such, the same too is rejected.

9. The last ground urged by the petitioner that the petitioner was earlier discharged on similar allegations by the Court of Ld. Special Municipal Magistrate Jammu and as such cannot be put to trial again is without any substance. The allegations in the present charge-sheet are with regard to the FIR bearing No. 42/2008 that was lodged with regard to kidnapping of the prosecutrix, whereas in the charge-sheet in which the petitioner was discharged by the Ld. Special Municipal Magistrate, Jammu were with regard to arrest of the petitioner from the house of the respondent No. 2 at Trikuta Nagar Jammu where the respondent No. 2 was running the brothel. The allegations in both the charge-sheets are different and as such the petitioner cannot derive any benefit from the order of discharge passed by the Ld. Special Municipal Magistrate Jammu.

10. I have gone through the impugned order. The learned trial court has rightly charged the petitioner for commission of above mentioned offences and there is no illegality in the order impugned. The learned trial Court has passed the order impugned well within the parameters laid down by the Apex court and as such the same is upheld.

11. In view of above, the present petition is found to be without merit and as such, is dismissed.