
(2019) 02 P&H CK 0298

In the Punjab And Haryana At Chandigarh

Case No : Criminal Revision No. 3366 Of 2018 (O&M)

Krishan Kumar Sharma

APPELLANT

Vs

State Of Punjab

RESPONDENT

Date of Decision : 13-02-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 356, 364A, 506, 511

Citation : (2019) 02 P&H CK 0298

Hon'ble Judges : Daya Chaudhary, J

Bench : Single Bench

Advocate : M.S. Chauhan, Bhavna Gupta

Final Decision : Allowed

Judgement

CRM No.35651 of 2018

There is delay of 31 days in filing this revision petition.

Notice in the application.

On asking of the Court, notice on behalf of the State has been accepted by Ms. Bhavna Gupta, DAG, Punjab.

As per the grounds mentioned in the application, the same is allowed and delay of 31 days in filing this revision petition is condoned.

CRR No.3366 of 2018

The present revision petition has been filed to challenge impugned order dated 05.06.2018 passed by the Additional Sessions Judge, Ludhiana, whereby, charges under Sections 364-A, 506 read with Section 34 IPC have been framed against the petitioner.

Briefly, the facts of the case as made out in the present revision petition are that FIR No.129 dated 22.08.2017 was registered under Sections 364-A, 506, 511 IPC at Police Station Division No.8, Ludhiana against accused persons, namely,

Gagandeep Singh, Ramandeep Singh and Krishan Kumar. Thereafter, the challan was presented and charges were framed under Sections 364-A, 506 read with Section 34 IPC against the accused persons vide order dated 05.06.2018.

Accused-petitioner Krishan Kumar has filed the present petition to challenge the order of framing of charges by raising various grounds.

Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the case whereas neither any allegation was levelled against him nor he was involved. The petitioner has been implicated in the case on the basis of confessional statement made by co-accused that the petitioner incited the other accused for demanding ransom of `2,00,00,000/- from complainant-Gagan Jain whereas there was no occasion for the petitioner to incite co-accused to demand ransom money. The petitioner was security guard of brother of the complainant, namely, Vipul Jain and father of co-accused, namely, Lakhwinder Singh was security guard for the complainant. The petitioner has been made accused on the basis of confessional statement made by co-accused just to save skin of their father. The petitioner was arrested on 23.08.2017 and during investigation, nothing was recovered from him. Even in call details of the accused, namely, Ramandeep Singh and Gagandeep Singh, the petitioner was not found to be involved in any manner. Learned counsel further submits that there was no motive on the part of the petitioner to commit any crime. The petitioner neither kidnapped nor abducted any person and even he did not keep any person in detention or threatened to cause death for demand of ransom. No offence is made out under Section 364-A IPC. At the most, the petitioner can be charged under Section 506 read with Section 34 IPC and not under Section 364-A IPC.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner on the ground that the charge can be modified after adducing evidence by the prosecution but no interference is required at this stage.

Heard arguments of learned counsel for the petitioner as well as learned State counsel and have also perused the impugned order as well as other documents available on the file. Section 364-A IPC deals with 'kidnapping for ransom etc.' and the same is reproduced as under: -

"Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or (any foreign State or international inter-governmental organization or any other person) to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine."

On perusal of definition of Section 364-A IPC, it is apparent that said section refers to both "Kidnapping" and "Abduction". Section 359 IPC defines kidnapping

and as per said provision, there are two types of kidnapping i.e. (i) kidnapping from India; (ii) kidnapping from lawful guardianship.

Abduction is defined in Section 362 IPC. The provision envisages two types of abduction i.e. (i) by force or by compulsion; and/or

(ii) inducement by deceitful means. The object of such compulsion or inducement must be the going of the victim from any place.

To "Induce" means "to lead into". Deceit according to its plain dictionary meaning signifies anything intended to mislead the other. Intention is relevant and in case, promise held out by the accused is there, then it is to be seen as to whether he was acting in a bonafide manner or not.

The offence of abduction is a continuing offence. Such Section was amended in the year 1992 by Act XLII of 1993 with effect from 22.05.1993 and it was subsequently amended in the year 1995 by Act XXIV of 1995 with effect from 26.05.1995. Said Section provides punishment for kidnapping, abduction or detaining for ransom.

For attracting the provisions of Section 364-A IPC, it is to be proved that the accused kidnapped or abducted the person; and secondly, kept him under detention after such kidnapping or abduction. It is also necessary to be proved that the kidnapping or abduction was for ransom.

In the present case, the ingredients of Section 364-A IPC for which, the petitioner has been charged, are missing. In order to prove the case under Section 364-A IPC, there must be an element of kidnapping or abduction or detention and thereafter, the ingredients of threat has to be supplemented. In the present case, there is no kidnapping or abduction and the only allegation against the petitioner is that he gave threat to the complainant to eliminate him and his family members in order to compel him to pay ransom amount of `2,00,00,000/-. Moreover, the petitioner has been implicated on the basis of confessional statement made by co-accused. Nothing has come in the investigation that the petitioner incited or demanded ransom. Even on verification of call details of petitioner and co-accused, namely, Ramandeep Singh and Gagandeep Singh, the involvement of the petitioner was not found. Meaning thereby, the demand of ransom has not been established as neither any demand for ransom was made nor it was conveyed to any person. Therefore, no charge could have been framed under Section 364-A IPC. There cannot be definite intention to show that threat was given for demand of ransom.

Same issue was there before Hon'ble the Apex Court in *Malleshi vs. State of Karnataka*, 2004(4) RCR (Criminal) 391 as well as before the Delhi High Court in *Vikas Tyagi and another vs. State*, 2012(8) RCR (Criminal) 810.

It can be concluded that without perusing the allegations levelled in the FIR and in absence of any ingredient, which is necessary for framing charge under Section 364-A IPC, the charge under Section 364-A

IPC has been framed by the trial Court.

Accordingly, by considering the facts and circumstances and law position as discussed above, the present revision petition is allowed and impugned order dated 05.06.2018 is modified to the extent that only charge for offence punishable under Section 506 read with Section 34 IPC be framed against the petitioner.