

(1994) 01 DEL CK 0056
In the Delhi High Court
Case No : Criminal Revn. No. 165 of 1992

Madan Lal

APPELLANT

Vs

Dr. Jaswant Batra

RESPONDENT

Date of Decision : 07-01-1994

Acts Referred:

Citation : (1994) 1 AD 222 : (1994) CriLJ 1767 : (1994) 53 DLT 326 : (1994) 28 DRJ 335 : (1994) RLR 121

Hon'ble Judges : A.D. Singh, J

Bench : Single Bench

Advocate : Ashok Mahajan and R.K. Chauhan, for the Appellant; K.K. Sud and Rakesh Sherwat, for the Respondent

Judgement

1. This is a criminal revision petition against the order of Shri B. N. Chaturvedi, Additional Sessions Judge dated April 25, 1992 whereby the criminal revision of the respondent was allowed and the order of the trial court dated December 15, 1990 summoning the respondent to stand trial for an offence punishable under S. 363, IPC was set aside.

2. Facts giving rise to this criminal revision petition are as under :

A complaint was filed by the petitioner against Tulsi Dass and respondent under Ss. 342/343/346/361/363/366 and 376/34, IPC with the allegation that the minor daughter of the petitioner, namely, Raj Bala was kidnapped by the respondent on the night intervening January 14 and 15, 1990 with the intention to compel her to marry Tulsi Dass who was keeping her in wrongful confinement ever since she was kidnapped. In support of the complaint the petitioner examined himself and two other persons namely, Shri Nanumal and Shri Yad Ram. On December 15, 1990 the trial court passed an order summoning the respondent in connection with the alleged commission of an offence under S. 363, IPC and against this order the respondent preferred a revision in the court below. On April 25, 1992 learned Additional Sessions Judge disposed of the revision holding that there were no grounds to proceed against the respondent

for an offence under S. 363, IPC and accordingly set aside the order of the trial court. While arriving at this conclusion, he noted that neither the complainant nor his witnesses had any personal knowledge about the kidnapping of Ms. Raj Bala. Learned Additional Sessions Judge was, Therefore, of the view that their statements were based on hearsay evidence. In this regard relevant portion of the order of learned Additional Sessions Judge reads as follows :

"The statements of Nanu Mal and Yad Ram are not directly concerned with the incident of kidnapping of Miss Raj Bala. These witnesses appear to have gathered about the kidnapping of Miss Raj Bala from the respondent only. The respondent himself did not have any personal knowledge in regard to the kidnapping of Miss Raj Bala. He rather came to know of it from his wife Smt. Shanti and son, Jagdish. Shanti and Jagdish have not been examined to state that they had taken away Miss Raj Bala in the car of the petitioner. The statement of the respondent that the petitioner had taken away his daughter Miss Raj Bala in his car is thus based on hearsay."

3. Learned counsel appearing for the petitioner submitted that Raj Bala was a minor and the petitioner being her legal guardian alone had the authority to give her in marriage and even Smt. Shanti, the mother and Jagdish, the brother were not permitted in law to marry her off without the consent of the petitioner. According to the learned counsel, since Raj Bala was removed from the custody of the petitioner by the respondent the learned Additional Sessions Judge was not right in setting aside the summoning order passed by the learned trial court qua respondent.

4. On the other hand, learned counsel for the respondent submitted that Raj Bala was 19 years old and her mother and brother had arranged her marriage with Tulsi Dass and it was at their instance that Raj Bala was married to him (Tulsi Dass), that from the statement of the petitioner recorded by the learned ASJ at the pre-summoning stage, it is clear that Raj Bala left the parental home accompanied by her brother and mother in the car of the respondent that they utilised the car of the respondent merely as a mode of transportation and the act of the respondent in providing the facility of the car to them cannot by any stretch of imagination be brought under the purview of S. 361, IPC. Learned counsel also pointed out that there was no allegation against the respondent of having exercised influence or pressure on Raj Bala or of having induced her to leave her house or to accompany him in the car.

5. I have considered the respective submissions of the learned counsel for the parties and have also gone through the record.

6. According to the complainant, on January 14, 1990 he left his residence around 2 p.m. and came back around 9.30 p.m. when he found that his family members were not present in the house and on enquiry came to know that Raj Bala, his son and Shanti Devi had left in the car of the respondent in the company of Tulsi Dass and the respondent himself. These allegations are merely

hearsay. Statements of Nanu Mal and Yad Ram also do not advance the case of the respondent as they were not eye-witnesses to the incident.

7. Besides the allegations do not constitute an offence punishable under S. 363, IPC. In this regard it will be relevant to extract the pertinent portion of the statement of the complainant on which reliance was placed by the learned counsel for the petitioner justifying the order summoning the respondent.

"It happened on dt. 14-1-90 that I departed from my house around 2 O'clock with Rehri and reached back my home at around 9 1/2 O'clock at night. I found two young children and no other was present in the house. After some time I came to know that my elder daughter named Raj Bala and son, elder to her who is 19 years of age and their mother Smt. Shanti Devi along with Dr. Jaswant Batra accused No. 2 and Tulsi Dass accused No. 1 have left in the motor of Dr. Jaswant Batra. These persons have left at about 7 O'clock. After passing of some time, at about 10 O'clock my wife Shanti Devi and elder son named Jagdish came back in the house and Ms. Raj Bala not with them. On enquiry my wife told that Ms. Raj Bala and elder son Jagdish along with Dr. Batra and Tulsi Dass were departed in the motor of Dr."

8. I am afraid that the statement of the petitioner does not support the arguments of the learned counsel for the petitioner that an offence under S. 363, IPC was prima facie made out against the respondent.

9. Kidnapping is defined in S. 361 of the IPC, relevant portion whereof reads as under :-

"Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian is said to kidnap such minor or person from lawful guardianship."

10. The most important ingredient of this section is taking or enticing away a minor or a person of unsound mind from keeping of the lawful guardian. Before a person is said to have kidnapped a minor, there must be some proof of his having done something which led to removal of the minor from the keeping of his/her guardian. In the statement of the petitioner there is nothing to suggest that the respondent induced Raj Bala in any manner to take this step. The statement of the petitioner, does not indicate how the accused respondent was the proximate or the immediate cause of Raj Bala going out of the keeping of the petitioner. It is not shown that the respondent took some active step in persuading or inducing Raj Bala to leave her home. It is obvious that she left her home before stepping into the car of the respondent. Who induced her to leave the house has not been indicated in the statement of the petitioner. It can be, Therefore, concluded that Raj Bala left her home and came to the car of the respondent in the company of her mother and brother without there being any persuasion, pressure, inducement and force proceeding from the respondent. As

soon as Raj Bala came out of the house in the company of her mother and brother, the act of taking her out from the guardianship of the petitioner was complete before they sat in the car of the respondent. It may be that the part played by the respondent in providing the car could be regarded as extending the facility to Raj Bala, her mother and brother, but that part cannot be regarded as taking out the minor from the keeping of the lawful guardian. In *S. Varadarajan Vs. State of Madras*, , the Supreme Court while dealing with the case of a minor girl, who was on the verge of attaining majority and who herself telephoned the accused to meet her and finding him waiting with a car got into that car of her own accord, held that the accused was not guilty of taking out the girl out of the lawful guardianship of her father as there was no suggestion that the act was done by force or anything like that on the part of the accused. In this regard their Lordships held as follows (para 9) :-

"It must, however, be borne in mind that there is a distinction between "taking" and allowing a minor to accompany a person. The two expressions are not synonymous though we would like to guard ourselves from laying down that in no conceivable circumstances can the two be regarded as meaning the same thing for the purposes of S. 361 of the Indian Penal Code. We would limit ourselves to a case like the present where the minor alleged to have been taken by the accused person left her father's protection knowing and having capacity to know the full import of what she was doing voluntarily joins the accused person. In such a case we do not think that the accused can be said to have taken her away from the keeping of her lawful guardian. Something more has to be shown in a case of this kind and that is some kind of inducement held out by the accused person or an active participation by him in the formation of the intention of the minor to leave the house of the guardian."

11. In the instant case, the very fact that Raj Bala was accompanied by her mother and brother indicates that she left the house voluntarily with their blessings. While saying so I hasten to add that it is correct that the consent of the minor is immaterial and "taking" would be complete if a minor is taken out the of possession of the father without his consent. But in the peculiar circumstances of this case, where there is no specific allegation of the respondent having taking any step in taking her out from the possession of her father, I am not inclined to hold that the ingredients of Ss. 361 and 363, IPC have been satisfied.

12. In view of the above discussion, I am of the opinion that the learned ASJ correctly came to the conclusion that the trial court was not right in summoning the respondent to stand his trial under S. 363, IPC. Accordingly the revision is dismissed.

13. Revision dismissed.