

(2011) 11 DEL CK 0255
In the Delhi High Court
Case No : Criminal Rev. P. No. 527 of 2011

Manju

APPELLANT

Vs

State of NCT Delhi

RESPONDENT

Date of Decision : 24-11-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164
Penal Code, 1860 (IPC) — Section 328, 34, 342, 363, 368

Citation : (2011) 11 DEL CK 0255

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : S.D. Singh, Mr. Rahul Kr. Singh and Ms. Bharti Tyagi, for the Appellant; Rajdipa Behura, APP for State, for the Respondent

Final Decision : Disposed Off

Judgement

Suresh Kait, J.

(Oral) CRL. M.A. 18366/2011 and CRL. M.A. 18367/2011 (Delay)

Delay condoned.

CRL. M.A. 18365/2011

Exemption is allowed subject to just exceptions.

Criminal M.A. stands disposed of.

CRL. REV.P. 527/2011

1. Vide the instant petition the petitioner has assailed the order dated 31.01.2011, whereby Id. Additional Sessions Judge (02) West, Delhi passed order on charge and vide separate order on the same date, charge u/s 368 Indian Penal Code, 1860 has been framed against the petitioner.

2. The facts in the instant case are extremely peculiar. All the accused namely

Vijay Lal, Kailash and Nanhe Lal have been charge-sheeted by police Station Nihal Vihar for the offence u/s 363/376G/328/506/342/34 Indian Penal Code, 1860 on the allegations that on 25.07.2009 at about 2 PM at B30220, Chandan Vihar, Nihal Vihar, Nangloi accused Nanhe Lal kidnapped prosecutrix and took her to the factory near Mundka Metro Station with an intent that she will be compelled to marry against her will and to seduce her for illicit intercourse and thereafter committed rape upon her.

3. As per the prosecution story, Nanhe Lal also made the prosecutrix smell a stupefying thing with intention to kidnap her and commit rape upon her. Co-accused Vijay Lal also committed rape upon the prosecutrix. It is further alleged that in between 25.07.2009 to 30.08.2009 at 295, Sector 26, Rohini, Delhi accused Kailash wrongfully confined prosecutrix knowing that she was kidnapped.

4. After framing the charge, prosecution led evidence against the aforesaid accused persons. Vide order dated 09.06.2009, the trial court record that no inference can be drawn that accused were guilty of charged offences. There is no material on record that on 25.07.2009 at about 2 PM accused persons kidnapped prosecutrix and took her to the factory near Mundka Metro Station with the intent that she will be compelled to marry against her will and to seduce her for illicit intercourse and committed rape upon her.

5. It is further recorded that since the prosecutrix (PW13) as well as the Complainant (PW14) of the case who is the father of the prosecutrix have not deposed anything discriminating against the accused persons and were declared hostile.

6. It is further recorded by the trial court that conscience of the court was completely satisfied that prosecution has not been able to bring home the charge against all the accused persons. The prosecution story doesn't inspire confidence and is not worthy of credence.

7. Consequently, keeping above discussion in view all the accused persons were acquitted from the charges.

8. After the acquittal of the accused persons mentioned above, supplementary chargesheet was filed against the petitioner and charge u/s 368 Indian Penal Code, 1860 was framed against her.

9. Ld. Counsel for the petitioner has submitted that in the chargesheet being filed against the aforesaid accused persons, the petitioner was not sent for trial nor her name was mentioned in Column no. 2 of the chargesheet. Her name was not even indicated in FIR.

10. In her supplementary statement u/s 161/164 Cr.P.C. prosecutrix has stated that during the said detention period she resided at the residence of the petitioner for one month till police came there. In spite, the prosecution investigated the case and found no evidence against the petitioner. Therefore, she was not charge-sheeted.

11. Ld. Counsel for the petitioner further submits that due the apprehension of arrest, she moved an application for anticipatory bail and vide order dated 26.04.2010, interim bail was granted and thereafter vide order dated 24.01.2011, the said protection was made absolute.

12. It is further submitted that after the acquittal of all the aforesaid accused, police filed supplementary charge-sheet against the petitioner u/s 363/368/376(2G)/328/342/506/34 Indian Penal Code, 1860.

13. Ld. Trial Judge has framed charge only under 368 Indian Penal Code, 1860 against the petitioner.

14. I note that the supplementary chargesheet in the instant case filed against the petitioner is in very mechanical manner without application of mind. The IO of the case has not even bothered to see for what offence the chargesheet had to be filed. He just copied the first chargesheet and filed against the petitioner. After the acquittal of all the accused, there was no necessity to file the supplementary charge-sheet.

15. Ld.APP on the other hand submits that in the first chargesheet the petitioner was not sent for trial, therefore, supplementary chargesheet was filed against her.

16. Keeping the statement of the prosecutrix into view and that the case against the co-accused of kidnapping and committing rape has not been proved and all the accused are acquitted, therefore the offence u/s 368 Indian Penal Code, 1860 against the petitioner would not arise.

17. In view of the above discussion, order dated 31.1.2011 is set aside and petitioner is discharged from all the charges.

18. Consequently Crl. Rev. P. 527/2011 is allowed and disposed of.