

(2021) 10 J&K CK 0065

In the Jammu And Kashmir High Court

Case No : Criminal Miscellaneous Petition (M) No. 675 Of 2019

Mohsin Rizvi

APPELLANT

Vs

Union Territory Of J&K And Another

RESPONDENT

Date of Decision : 29-10-2021

Acts Referred:

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 109, 363, 366, 376
Code Of Criminal Procedure, 1973 — Section 164A

Citation : (2021) 10 J&K CK 0065

Hon'ble Judges : Rajnesh Oswal, J

Bench : Single Bench

Advocate : Sunil Sethi, Mohsin Bhat, Bhanu Jasrotia, A. P. Malik

Final Decision : Dismissed

Judgement

Rajnesh Oswal, J

1. The present petition has been filed by the petitioner for quashing FIR bearing No. 550/2017 dated 19.12.2017 for commission of offences under sections 363 and 109 RPC registered with Police Station, Rajouri.

2. It is stated that the petitioner is presently 19 years of age and had friendly relations with one girl named withheld. The friendly relations of the petitioner were not to the liking of the mother of the girl because the petitioner and the said girl belonged to different religions. However, at no point of time there was any physical relationship with the petitioner and the said girl. In order to stop the petitioner with the meeting of the said girl and to pressurize the petitioner, the mother of the girl filed a complaint with Police Post City, Rajouri and succeeded to lodge the FIR impugned dated 19.12.2017 under sections 363 and 109 RPC against the petitioner.

3. It is further submitted that during this intervening period of two years, the said girl was married to one Mr. Ajay Yadav and is living presently in Delhi and she is reportedly having a girl child from her matrimonial wedlock from the said

marriage as well. It is further stated that in order to avoid her prosecution, as the false and frivolous FIR was lodged by the mother of the girl, the mother of the girl got the statement of her daughter recorded in support of her allegations after two years of lodging of the FIR and this mere fact alone, demonstrates the falsity of the impugned FIR.

4. The petitioner has impugned the FIR on the following grounds:

(i) That the FIR impugned is apparently false and frivolous as, Had it been a case of sexual encounter of the said girl with the petitioner, she could have got herself medically examined after the occurrence or her medical examination could have been done by the Police, however no such examination was done and now the girl is married and the medical evidence has become irrelevant with the passage of time.

(ii) That there is no plausible explanation of the delay of two years in getting the statement of the girl recorded when the girl during this period was all along available in Rajouri and there was no pressure upon the girl not to give her statement.

(iii) That the petitioner is a juvenile on the day when the said allegation was made against him in the impugned FIR and the statement has been made by the girl only to save her mother from facing prosecution as the FIR lodged by her mother was false.

(iv) That the FIR impugned is liable to be quashed as none of the ingredients of sections 363 and 109 RPC are present against the petitioner.

5. Response stands filed by the respondents in which it is stated that on 19.12.2017, complainant lodged a written complaint at Police Post City, Rajouri stating therein that she had been residing at W. No. 9 near Bus Stand, Rajouri and her daughter aged 17 years is a student of 12th Class. On 18.12.2017 at 4.00 PM alleged persons, namely, Mohsin Quershi, petitioner herein with the conspiracy of others kidnapped her daughter and took her to unknown place. On this report, cognizable offence was entered vide DD No. 09 dated 19.12.2017 at Police Post City Rajouri and accordingly, a case FIR No. 550/2017 for commission of offences under sections 363 and 109 RPC was registered at Police Station, Rajouri. During the course of investigation, the statement of the victim was recorded under section 164-A Cr.P.C. before the Chief Judicial Magistrate, Rajouri on 07.11.2019 and offences under sections 366 and 376 were proved against the accused person, namely, Mohsin Rizvi, petitioner herein and offences under sections 363 and 109 RPC were not proved and deleted.

6. Mr. Sunil Sethi, learned senior counsel for the petitioner has vehemently argued that the statement of the victim was recorded after two years and offence under sections 363 and 376 were added and the mere fact that the statement of the victim was recorded after two years demonstrates that a false and frivolous FIR had been lodged by the mother of the victim.

7. On the other hand, Mr. Bhanu Jasrotia, learned GA has vehemently argued that the investigation was carried out and pursuant to the investigation, offences under sections 366 and 376 RPC were also added and mere fact that there was delay in recording the statement of the victim cannot result into the quashment of the FIR.

8. Heard learned counsel for the parties and perused the record.

9. From the record, it is evident that on 19.12.2017 at 1340 hours complainant Neelam Devi lodged a report at Police Post City Rajouri and in which it was stated that his daughter was 17 years of age and on 18.12.2017 at 4 PM the accused along with others had kidnapped and taken her daughter to unknown place and despite search she could not be located. On this, the FIR impugned was registered and it is also evident that the statement of the abductee was recorded after nearly two years of the alleged occurrence and during the course of investigation, offence under section 376 RPC has been added and offences under sections 366 and 376 RPC have been proved as per the investigation.

10. The only contention raised by Mr. Sethi is that there has been a delay of two years in recording the statement of the victim girl and it clearly shows that the false and frivolous FIR was lodged by the mother of the complainant in order to force the petitioner not to continue the friendly relationship with her daughter. A perusal of the FIR reveals the commission of cognizable offence and during the course of investigation, offences under sections 366 and 376 have been added and the contention that the FIR is required to be quashed because after two years statement of the girl was recorded, is misconceived.

11. The petitioner can take the advantage of the delay in recording the statement of the girl during the course of trial in the event of filing of challan provided the prosecution is unable to explain the delay in recording the said statement, but nonetheless, merely delay in recording the statement of the witness/abductee cannot result into the quashing of the FIR. The other contention of Mr. Sethi that the said FIR was lodged with ulterior motive to desist the petitioner from continuing his friendly relationship with her daughter, is a disputed question of fact that cannot be adjudicated upon by this Court while considering a petition for quashing the FIR. The petitioner can raise this plea during the course of trial in the event the charge-sheet is filed against the petitioner.

12. In view of all what has been discussed above, there is no merit in this petition, as such, the same is dismissed.