

**(2012) 01 DEL CK 0315**

**In the Delhi High Court**

**Case No :** Criminal Rev. P. No. 18 of 2012 and Criminal M.A. 328 of 2012

Pandit Pappu Dubey

APPELLANT

Vs

State

RESPONDENT

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**Date of Decision :** 17-01-2012

**Acts Referred:**

**Citation :** (2012) 01 DEL CK 0315

**Hon'ble Judges :** Mukta Gupta, J

**Bench :** Single Bench

**Advocate :** R.K. Tarun, for the Appellant; Manoj Ohri, APP for State with SI Umesh Rana, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Hon'ble Ms. Justice Mukta Gupta

Crl. M.A. 328/2011

Exemption allowed subject to just exceptions.

Crl. Rev. P. No. 18/2012 & Crl. M.A. 328/2012 (stay)

1. By this petition the Petitioner challenges the order dated 22nd November, 2011 directing framing of charge against the Petitioner for offences punishable u/s 366 and 506 read with Section 34 IPC.

2. Learned counsel for the Petitioner contends that the Petitioner is the pujari, who got the marriage performed. Petitioner was not named by the prosecutrix in her statement recorded u/s 161 Cr.P.C. It is only when she appeared in the witness box she named the Petitioner and on the basis of the said statement the Petitioner has been summoned and now the charges are framed against him. There is neither any overt act nor any common intention attributable to the Petitioner. The Petitioner has played no role in kidnapping the prosecutrix. It is stated that the learned Trial Court just noted the submissions of the Petitioner, however did not consider the same. Relying upon Union of India (UOI) Vs.

Prafulla Kumar Samal and Another, it is contended that at the stage of charge the Court is required to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case is made out against the accused or not. The Learned Trial Court with a pre-determined mind issued summons and framed charges against the Petitioner. This is borne out from the fact that even before the Petitioner was summoned, the Learned Trial Court while framing the charges against the co-accused held that the co-accused along with the Petitioner, who was not arrested, committed the said offence. From the evidence on record it is not evident that there is grave suspicion against the Petitioner. Hence no charge could have been framed against him. The complainant in her statement itself has stated that she lodged the present complaint as a counter-blast because the main accused had filed the petition u/s 9 of the Hindu Marriage Act for restitution of conjugal rights. At best the case against the Petitioner raises simple suspicion and thus the Petitioner is entitled to be discharged. Reliance is also placed on Mahabir Vs. State 1994 JCC 413 to contend when the prosecutrix accompanies the accused without any protest then she is a willing and active participant. Relying upon Priya Patel Vs. State of M.P. and Another, it is contended that a woman cannot be said to have intention to commit rape and similarly in the present case if the pujari got the marriage performed he cannot be said to have shared common intention to cause kidnapping.

3. Learned APP on the other hand contends that the prosecutrix filed a complaint before the Learned Metropolitan Magistrate u/s 156(3) Cr.P.C. wherein she clearly leveled allegations against the Petitioner. On the said complaint the FIR was registered. However, during investigation when the statement of the prosecutrix was recorded there were no allegations against the Petitioner. Thus, no charge sheet was filed against the Petitioner. When the prosecutrix appeared in the witness box before the Trial Court she reiterated her allegations against the Petitioner and thus the Learned Trial Court summoned the Petitioner and framed the charge. The prosecutrix has clearly stated that in the presence of the Petitioner the prosecutrix was threatened, however he continued performing the marriage and forcible signatures were taken on a number of documents. Relying upon State of Madhya Pradesh Vs. Sheetla Sahai and Others, it is contended that at the stage of framing of charge if two views are possible then the charges can be framed but if only one view is possible to be taken, the Court shall not put the accused to harassment by asking him to face the trial.

4. I have heard learned counsel for the parties. Briefly the facts of the case are that the prosecutrix and the co-accused Raju's marriage was performed by the Petitioner on 18th December, 2004. The prosecutrix filed a complaint before the Learned Metropolitan Magistrate u/s 156(3) Cr.P.C. wherein the Learned Metropolitan Magistrate vide order dated 2nd March, 2007 directed the SHO PS Saraswati Vihar to register a FIR. Consequently, FIR No.311/2007 under Sections 363/362/365/366/468/466/470/34 IPC was registered at P.S. Saraswati Vihar. The FIR was based on the complaint of the prosecutrix. The allegations as set out against the Petitioner in the complaint and the FIR are in para 4 of the complaint

wherein it is alleged "accused No. 5 i.e. the Petitioner did some rituals and the complainant and accused No.1 garlanded each other, accused No.2 to 4 threatened the complainant to do what they said, otherwise they will kill the complainant, accused No.1 also threatened to kill the complainant by brandishing knife towards the complainant and to do what was asked by them, those people took several snaps of the complainant with accused No.1 against her will, the signature of the complainant were also taken forcibly by them on some documents blank as well as written and accused No.5 was also involved with the accused No. 1 to 4."

5. Thus, from a perusal of the complaint it is apparent that the prosecutrix leveled allegations. However, it appears that when her statement u/s 161 Cr.P.C. was recorded, the Police did not record the allegations against the Petitioner and thus he was not charge-sheeted and was made a witness. However, at the time of framing of charge against the co-accused the contents of the FIR were before the Trial Court who after going through the same framed the charge that Raju Singh and Urmila Devi along with co-accused Malik, Anil Kumar and Pappu Dubey (not arrested) threatened the complainant by brandishing knife to do as directed or she will be killed.

6. When the prosecutrix was examined before the Learned Trial Court she stated:

On the pretext of interview, accused Raju took me to a temple on a scooter on 15.12.2004, when I asked him as to why he has taken me to the temple, then he told me that her mother had come at the temple to perform Puja and told that we will go for the interview after some time. There at the temple, both the accused namely Urmila and Raju as well as one girl namely Malika Khan and one boy namely Anil met me. There at the temple, one Pandit Ji started Puja and accused Raju put a garland and also compelled me to put a garland in his neck. I can identify the said Pandit Ji, if shown to me. I was threatened by accused Urmila and Raju to do whatever they say and accused Raju showed me a knife and threatened to kill me and my family members. They all forcibly got the marriage ceremony between me and Raju performed and took photographs of the said marriage. They also took my signature forcibly on some blank papers and on some documents which were already written in English as well as in Hindi. The said threatening and execution of documents and taking of photographs took place in the presence of said Pandit Ji and he had also observed that the knife was being shown to me by accused Raju, but he continued the marriage ceremony/puja

7. It may be noted that the statement was not on the leading question as stated by the learned counsel for the Petitioner and the leading question put to the prosecutrix was only with regard to the identity of the Priest who performed the marriage.

8. The Hon"ble Supreme Court in Union of India Vs. Prafulla Kumar Samal (supra) laid down the following principles:

(1) That the Judge while considering the question of framing the charges u/s 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out:

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction u/s 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post Office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

9. From a perusal of the statement of the prosecutrix it is evident that when the offence was committed by the co-accused, the Petitioner continued to perform the marriages, the threatening and brandishing of knife and signing of blank and written papers were all done in the presence of the Petitioner. Thus, it cannot be said that the Petitioner did not share the common intention or did not commit any overt act. The overt act on the part of the Petitioner is performing the marriage, when the prosecutrix was threatened to marry and sign documents. Further, threats were given in his presence and he continued performing marriage.

10. Section 36 of the IPC provides:

36. Effect caused partly by act and partly by omission.- Wherever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission, is an offence, it is to be understood that the causing of that effect partly by an act and partly by an omission is the same offence.

11. Thus, an omission is also an act and in the present case the way the Petitioner cooperated in the offences committed by the co-accused clearly showed that he shared a common intention to commit the alleged offences.

12. I find no merit in the present case. Petition and application are dismissed.