
(2021) 10 DEL CK 0066

In the Delhi High Court

Case No : Criminal Revision Petition No. 329 Of 2021

Priyanshu Kumar

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 12-10-2021

Acts Referred:

Indian Penal Code, 1860 — Section 364A
Code Of Criminal Procedure, 1973 — Section 319

Citation : (2021) 10 DEL CK 0066

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : M.P.Sinha, Amit Gupta

Final Decision : Dismissed

Judgement

Mukta Gupta, J

The hearing has been conducted through Physical Mode.

CRL.M.A. 16535/2021 (Exemption)

1. Exemption allowed subject to just exceptions.

2. Application is disposed of.

CRL.REV.P. 329/2021

1. By this petition, the petitioner challenges the order dated 18th September, 2021 passed by the learned ASJ directing framing of charge for offences punishable under Section 364A IPC against the petitioner.

2. Learned counsel for the petitioner states that the petitioner was in very good relationship with the victim family and usually took the child to play with him. The demand of money, even as per the Whatsapp chat does not relate to the victim and even in the alleged demands, the petitioner repeatedly stated that he will send the child. Thus, the amount demanded cannot be treated as a

ransom and further, there was no apprehension of death or hurt to the child, therefore the ingredients of Section 364A IPC are not made out and hence, no charge for offence punishable under Section 364A IPC could be framed.

3. The above noted FIR was registered on the complaint of mother of the victim child Karthik Kaushik aged 7 months. She stated that they had a tenant, namely, Suresh Kumar on the second floor, who was residing with his son Priyanshu Kumar, daughter Bhawana, elder son Ravish and the wife of the elder son, namely, Pooja. Priyanshu used to come to their first floor everyday to play with the child and used to take him to the second floor and also on the terrace. So, their relations became quite friendly. On 9th April, 2021 at around 10.50 AM, Priyanshu Kumar came to their floor and asked the complainant about the minor child Karthik, to which she stated that he was sleeping. Priyanshu Kumar, again came back at 11.00 AM. By that time also the minor child was sleeping, so he went and came again at 12.00 noon. He stated that since it was his holiday, as and when Karthik gets up, he would play with him. When Karthik got up, Priyanshu Kumar took him to his floor and the complainant went to take bath. After some time, Priyanshu's sister came running asking for Karthik, on which the complainant stated that Karthik was with Priyanshu Kumar. The sister looked for Priyanshu and Karthik but did not find. The complainant asked for the number of Priyanshu and then made a phone call. However, the petitioner did not pick up the phone. She messaged him and he still did not reply. Thereafter she received messages for demand of money from the petitioner. She called up her husband whose phone was with her brother-in-law and told him that Priyanshu Kumar has taken Karthik and was demanding money. Thus, the FIR in question was lodged.

4. Besides the statement of the complainant, prosecution has also relied upon the messages between the complainant and the petitioner, wherein he is repeatedly demanding Rs. 40 lakhs in his HDFC account and has thereafter also stated that whatever they have, they should send and only thereafter, he will send the child. He clarified that he had no enmity with the child but he will send him only after the money was received. It was stated that "Meri isse koi dushmani ni bas paise chahiye merko aap no doge to mLik ko. BHen dunga" In his chats the petitioner also stated that whether they take loan or whatever, he needed money. He further stated that they must save the money, he will not come but will send the boy in a taxi. He further stated "So don't delay please the child is in trouble". According to him, the complainant's husband should either take the loan or from his father or his brother but he needed money. He further stated "Kitna wait bolo" "Itna rora ye" "Kuch ho gya to" "Multiple lakhs chahiye" "10 se km ni to kl hi dekh payoge isko" "I am engineer you know mint". On the complainant's husband saying they need some time, the petitioner asked how much time and stated "Mujhe kyun pareshan krre ho rora bhut fekne ka mannhora". From the chat it is clear that on the complainant's husband stating that he did not have the complete money at that time and he should do nothing to the child the appellant stated that as the child was crying, he wished to throw child.

5. The conversation between the petitioner and the complainants on the Whatsapp chat not only shows the manner in which hurt was caused to the baby child but is also sufficient to create an apprehension in the mind of the complainants with regard to the safety of the child, even though the petitioner also stated that he would do nothing to the child but he was frustrated from his life. He further stated that he should not be given the threat of the police because he was a software engineer; they would never be able to track him.

6. Section 364A IPC reads as under:-

"Kidnapping for ransom:-

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 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."

7. Thus the three main ingredients for an offence punishable under Section 364A IPC are kidnapping, demand of ransom and threat to cause death or hurt to such person kidnapped or by conduct give rise to a reasonable apprehension that such person may be put to death or hurt.

8. Further 'hurt' has been defined under Section 319 IPC. It states that whoever causes bodily pain, disease or infirmity to any person is said to cause hurt. Undoubtedly when a baby child is kept in confinement and is crying it is a condition adverse to the normal condition causing bodily pain to the child and thereby fulfilling the ingredients of the offence of hurt as defined under Section 319 IPC.

9. Learned counsel for the petitioner contends that since there was no hurt caused to the child nor any apprehension of hurt, necessary ingredients of Section 364A IPC are not satisfied. This contention of learned counsel for the petitioner deserves to be rejected. The child was kept as 'kidnapped' till the ransom demand was met. Even with the contradictory versions of the petitioner stating that he did not want to harm the child, he also stated that he wished to throw the child as he was crying. As the child was in a bad condition crying, the child being 7 months old who could not have stayed without the mother, it is evident that bodily pain i.e. hurt was caused to the child. Further from the messages from the petitioner including the message to throw the child, there was a clear apprehension in the mind of the parents that death or hurt could be caused to the child.

10. Hence, this Court finds no error in the impugned order passed by the learned Additional Sessions Judge framing a charge under Section 364A IPC against the petitioner.

11. Petition is dismissed.

12. Order be uploaded on the website of this Court.