
(2011) 09 DEL CK 0180

In the Delhi High Court

Case No : Criminal Rev. P. 777 of 2010 and Criminal M.A. No. 18596 of 2010

Vikas Tyagi and Another

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 01-09-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 34, 364A, 365, 367

Citation : (2011) 4 JCC 2696

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Sandeep Tyagi, Manoj Tyagi and Ashish Goel, for the Appellant;
Mukesh Gupta, APP and Jai Prakash, ASI, for the Respondent

Judgement

Mukta Gupta, J.—By this petition the Petitioner challenges order dated 23rd July, 2010 directing framing of charge against him for offences punishable u/s 394/307/34 Indian Penal Code and an alternative charge u/s 364A Indian Penal Code. Learned Counsel for the Petitioner contends that the dispute between the parties is essentially a civil dispute which has been given a colour of the criminal offence. The alternative charge of kidnapping for ransom is not made out. As there is No. demand of ransom from any other person, the essential ingredient of the offence punishable u/s 364A Indian Penal Code is absent. Further the dispute between the parties only related to the execution of documents and hence the same cannot be made an offence for kidnapping as the parties were going for the registration of the documents. Even as per the role assigned No. offence u/s 307 Indian Penal Code is made out.

2. I have heard learned Counsel for the parties.

3. The Complainant Ashok Kumar Nair in his complaint has alleged that he had purchased a plot No. 104/14, Arora Farms, Sant Nagar, Delhi measuring 50 yards for a consideration of Rs. 4.70 lakhs from Pankaj Tyagi three months ago. He had already paid a sum of Rs. 3.70 lakhs to Pankaj Tyagi at the time of agreement itself and had received a receipt thereof. There was some rectification in the

documents which was to be done by Pankaj Tyagi. The period of agreement was coming to an end on 15th June, 2007. So the Complainant asked Pankaj Tyagi for registration of the documents. He assured registration and rectification of documents within 2-4 days after receiving the remaining amount. Pankaj Tyagi called the complainant who went near his house at the appointed time with a polythene bag of white and light pink colour containing Rs. 1 lakhs in cash, two General Power of Attorneys and two photographs. Pankaj Tyagi made him sit on the back seat of the white colour Zen Car bearing No. DL-1CE-3404 in between Vikas Tyagi and himself. The driver took the car to a lonely place. When the Complainant asked Pankaj Tyagi about his father as his father was to execute the documents he replied that his father is at the tube well and they had to pick him from there and Sanjay had to be dropped there. Thereafter these persons, that is, the Petitioners and Sanjay took him near Yamuna after passing through Yamuna Pusta road near the tube well. Before getting down from the car Pankaj Tyagi pressed the throat of the complainant and Vikas Tyagi who was sitting on the right side held his hands very tightly. The Complainant hit his leg to the window of the car due to which it opened. A man who was working in Jungle heard his shrieks and gave alarm. On this Pankaj Tyagi and Vikas Tyagi, the Petitioners herein took out two dandas which were kept inside the car and started beating him. Pankaj Tyagi asked him about the receipt of Rs. 3.70 lakhs to which he replied that the receipt was at home. Pankaj Tyagi snatched the polythene bag containing ten bundles of Rs. 100/- each, two GPA papers and photographs. Thereafter Pankaj Tyagi instructed the driver to drive fast and they threw the complainant out from the running car at some distance so that people think that it was an accident. The Complainant became unconscious. After some time when he regained his conscious he informed the police.

4. Section 364A Indian Penal Code reads as under:

364A. Kidnapping for ransom, etc.- 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 in order to compel the Government or any foreign State or international inter-governmental organization 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.

5. Hon''ble Supreme Court in Malleshi Vs. State of Karnataka, held as under:

12. To attract the provisions of Section 364A what is required to be proved is: (1) that the accused kidnapped or abducted the person; (2) kept him under detention after such kidnapping and abduction; and (3) that the kidnapping or abduction was for ransom. Strong reliance was placed on a decision of the Delhi High Court in Netra Pal v. State (NCT of Delhi) 2001 Cri LJ 1669 (Del) to contend that since the ransom demand was not conveyed to the father of PW 2, the intention to demand was not fulfilled.

13. To pay a ransom as per Black's Law Dictionary means "to pay price or demand for ransom." The word "demand" means "to claim as one's due"; "to require"; "to ask relief"; "to summon"; "to call in court" "an imperative request preferred by one person to another, under a claim of right, requiring the latter to do or yield something or to abstain from act"; "an asking with authority, claiming or challenging as due". The definition as pointed out above would show that the demand has to be communicated. It is an imperative request or a claim made.

6. A perusal of the allegations made in the complaint shows that the offence under Sections 394/307/365 and 367 Indian Penal Code are clearly made out though No. offence u/s 364A Indian Penal Code is made as the necessary ingredients for offence u/s 364A that a demand of ransom from another person or to compel any other person to do or to abstain from doing any act is not alleged.

7. In the facts of the case and the law laid down by the Hon'ble Supreme Court, the impugned order is modified to the extent that the charge against the Petitioner be framed for offences punishable u/s 394/307/365/367/34 Indian Penal Code.

8. Petition and application are disposed of. Stay stands vacated.

9. Trial Court record be sent back.