

**HIGH COURT OF TRIPURA  
AGARTALA  
Crl.Rev.P.No.42 of 2022**

**Sri Suman Bhowmik**

.....Petitioner(s)

**Versus**

**The State of Tripura**

.....Respondent(s)

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|----------------------------------------|---|------------------------------------------------|
| For Petitioner(s)                      | : | Mr. P. Majumder, Adv.<br>Ms. S. Debbarma, Adv. |
| For Respondent(s)                      | : | Mr. S. Ghosh, Addl. P.P.                       |
| Date of hearing<br>of Judgment & Order | : | 18.01.2023                                     |

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**HON'BLE THE CHIEF JUSTICE (ACTING)**

**Judgment & Order(Oral)**

Ms. S. Debbarma, learned counsel appearing on instruction of Mr. P. Majumder, learned counsel for the petitioner as well as Mr. S. Ghosh, learned Addl. P.P. appearing for the State.

2. This is a petition under Section 397 read with Section 401 of Cr.P.C. for setting aside the judgment dated 06.07.2022 passed in Criminal Appeal No.22 of 2019 along with Criminal Appeal No.25 of 2019 passed by the Additional Sessions Judge, Gomati Judicial District, Udaipur, Tripura affirming the order of conviction and sentence dated 29.06.2019 passed by the Assistant Sessions Judge, Gomati Judicial District, Udaipur, Tripura in Case No.ST 12 (GT/U) of 2017 (Type-II) sentenced the petitioner to suffer rigorous imprisonment for five years for commission of offence punishable under Section

366 of the IPC and also sentenced to pay a fine of Rs.10,000/- only in default to suffer further rigorous imprisonment for six months.

3. The genesis of the case is that on 15.11.2017 at about 21/11 hrs. one Uttam Kumar Das, son of Sri Jagadish Chandra Das of Mirza, Takhirai Para, P.S. Kakraban has appeared at Kakraban P.S. and lodged a written complaint to the fact that on 14.11.2016(morning) at about 9:00 hrs. the daughter of the complainant aged about 14 years left her friend's house at Mirza Bazar to collect examination note but till 14:00 hrs., she did not return and accordingly, on 14.11.2016 (night) at about 21:30 hrs. the complainant received information from Cell phone No.3259013168 that his daughter is well and subsequently the said mobile number was switched off and based on the said facts, the complainant suspected that his daughter was forcibly kidnapped by unknown person. Thereafter, a case was registered at Kakraban P.S. vide Kakraban P.S. Case No.2016 KKB 088 dated 15.11.2016 under Section 363 of the IPC against the accused persons.

4. During the course of investigation and after collecting the statement of the witnesses during investigation and considering the other circumstantial evidence, the I.O. found prima facie charge against the accused persons namely, Suman Bhowmik, Mithun Das, Paltu Debnath, Binoy Debnath and Biplab Debnath under Section 366A read with Section 34 of the IPC and submitted the charge sheet against the accused persons vide Charge Sheet No.08 of 2017 dated 28.02.2017. Thereafter, after hearing the prosecution as well as the defence and also on perusal of the papers submitted by the Investigating Officer, the Trial Court framed the charge against the accused

petitioner for the offence punishable under Section 366 of the IPC to which the accused petitioner pleaded not guilty and claimed to be tried.

5. Thereafter, the prosecution has examined as many as 14(fourteen) witnesses and they were cross-examined and exhibited some of the documents and thereafter, the accused petitioner was examined under Section 313 of the Cr.P.C. and he declined to adduce any defence evidence in support on his behalf.

6. The Trial Court after hearing the argument of both the sides, the Assistant Sessions Judge, Gomati Judicial District, Udaipur, Tripura in Case No.ST 12(GT/U) of 2017 (Type-II) sentenced the petitioner to suffer rigorous imprisonment for five years for commission of offence punishable under Section 366 of the IPC and also sentenced to pay a fine of Rs.10,000/- only in default to suffer further rigorous imprisonment for six months on 29.06.2019.

7. Being aggrieved and dissatisfied with the order of sentence dated 29.06.2019 passed by the Assistant Sessions Judge, Gomati Judicial District, Udaipur, Tripura in Case No.ST 12 (GT/U) of 2017 (Type-II) as mentioned above, the petitioner preferred a Criminal Appeal vide No.Criminal Appeal No.25 of 2019 before the Additional Sessions Judge, Gomati Judicial District, Udaipur, Tripura on the following grounds :

- i) the Learned Trial Court has failed to appreciate the evidences in accordance with law.**
- ii) the findings of the Learned Trial Court are passed on mere surmise and conjecture.**
- iii) the finding of the Learned Trial Court are perverse and against the evidence on record or based on no evidence.**
- iv) the Learned Trial Court has erred both in law and evidence in appreciating the evidence on record.**
- v) the order passed by the Learned Trial Court is highly illegal, perverse and liable to be set aside.**

8. After hearing the arguments of both sides, the learned Additional Sessions Judge, Gomati Judicial District, Gomati, Udaipur, Tripura by his judgment dated 06.07.2022 dismissed the Criminal Appeal No.25 of 2019 and affirmed the order of sentence dated 29.06.2019 passed by the learned Assistant Sessions Judge, Gomati Judicial District, Udaipur, Tripura.

9. Being aggrieved and dissatisfied with the order dated 06.07.2022 dismissed the Criminal Appeal No.25 of 2019 preferred by the petitioner and affirmed the order of sentence dated 29.06.2019 passed by the learned Assistant Sessions Judge, Gomati Judicial District, Udaipur, Tripura. Hence, this Criminal Revision Petition.

10. Ms. S. Debbarma, learned counsel appearing for the petitioner has submitted that the learned Additional Sessions Judge should have set aside the order of sentence passed by the learned Trial Court as the learned Trial Court has failed to apply its judicious mind in appreciation of evidence on record and accordingly, arrived at a wrong conclusion and as such, the judgment dated 06.07.2022 passed by the learned Additional Sessions Judge, Gomati Judicial District, Udaipur, Tripura in respect of the present petitioner is liable to be set aside. She has further stated that the appellate court has very carefully illustrate the objection and ingredients of offence under Section 366 of the IPC in the judgment dated 06.07.2022 and accordingly, the same is mentioned in para-24(1), 24(2), 24(11) which reads as under :

24. Section 366 of the IPC :

***"366. Kidnapping, abducting or inducing woman to compel her marriage, etc. whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit***

*intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and whoever by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable as aforesaid."*

24(1) Section 366 clearly stated that whoever kidnaps/abducts any woman with the intent that she may be compelled or knowing that she will be compelled, to either get her married or forced/seduced to have illicit intercourse, they shall be punished with imprisonment of up to ten year and fine. The aforesaid Sections requires the prosecution not only to lead evidence to prove kidnapping simpliciter, but also required them to lead evidence to portray the above mentioned specific intention of the kidnapper. Therefore, in order to constitute an offence under Section 366, besides proving the factum of the abduction, the prosecution has to prove that the said abduction was for one of the purposes mentioned in the section.

24(2) The Hon'ble Supreme Court in a case in Kavita Chandrakant Lakhani versus State of Maharashtra reported in 2018 6 SCC 664 held in para-10 that ".....in order to constitute the offence of abduction a person must be carried off illegality by force or deception, that it, to compel a person by force or deceitful means to induce to go from one place to another. The intention of the accused is the basis and the gravamen of an offence under this Section. The volition, the intention and the conduct of the accused to determine the offence, they can only bear upon the intent with which the accused kidnapped or abducted the woman and the intent of the accused is the vital question for determination in each case. Once the necessary intent of the accused is established, the offence is complete, whether or not the accused succeeded in effecting his purpose, and whether or not the woman consented the marriage or the illicit intercourse.

24(11) Apart from this, to constitute an offence under Section 366 IPC, it is necessary for the prosecution to prove that the accused induced the complainant woman or compelled by force to go from any place, that such inducement was by deceitful means, that such abduction took place with the intent that the complainant may be seduced to illicit intercourse and that the accused knew it to be likely that the complainant may be seduced to illicit intercourse as a result of her abduction. Mere abduction does not bring an accused under the ambit of this penal section. So far as charge under Section 366 IPC is concerned, mere finding that a woman was abducted is not enough, it must further be proved that the accused abducted the woman with the intent that she may be compelled or knowing it to be likely that she will be compelled to marry any person or in order that she may be forced or seduced to illicit intercourse or knowing it to be likely that she

**will be forced or seduced to illicit intercourse. Unless the prosecution proves that the abduction is for the purpose mentioned in Section 366 of the IPC, the court cannot hold the accused guilty and punish him under Section 366 IPC."**

11. But in the present case, according to Ms. Debbarma, learned counsel as per deposition of the PW-12 before the learned Trial Court that she was boarded a flight from Agartala to Kolkata along and from Kolkata Airport she was taken to Nabadwip in the friend's house of the petitioner and on the subsequent date, she was taken to another friends of the petitioner and was taken to a fare of Rashmela and the petitioner has taken to her to a nearby temple and forcibly put bangles on her hand. Petitionre has used force against her wish to put verbally on her forehead and bangles on her hands. She admitted that at that relevant point of time she could not resist to such act of the petitioner and thereafter, the petitioner took her to his friends house and subsequently, his maternal uncle house at Nabadwip.

12. Ms. Debbarma, learned counsel has submitted that in the cross examination, PW-12 has specifically stated in her deposition that :

**"I entered into the Airport to prove my identity. I have shown the Aadhar Card in the gate of the Airport, I was also in the Airport when the Airport staff was conducting the security check. On that point of time I also never disclosed any fact about my kidnapped."**

It has been further stated by PW-12 in her cross-examination that:

**"After the exit from Kolkata Airport I have disclosed the fact to any police personnel. I have also never called to my parents when I was in the Airport. I have my grandmother's house in West Bengal. I have never visited my grandmother's house in West Bengal."**

13. Ms. Debbarma, learned counsel has stoutly submitted that PW-12 in her cross-examination has clearly admitted that she do not have any kind of

love affairs with the present petitioner for last one year and she has also admitted that she has seen some SMS to the present petitioner from her mother's mobile phone. In the cross-examination she has stated as under :

**"I have not informed the name of the persons namely Paltu, Binoy, Biplab and Mithun who forcibly took me to Agartala Airport from Mirja School Chowmuhani and boarded me a flight at Agartala from Agartala Airport for Kolkata wither to the police or before any Court. I have stated to the Court and also before the IO that Suman Bhowmik forcibly put vermillion and bangles upon my forehead and my hand and I could not resist to such act of Suman and identified me as his wife to everybody."**

14. Ms. Debbarma, learned counsel has submitted that as per deposition of PW-1 indicated that PW-12 used to talk over mobile phone frequently with the appellant No.2, Mithun Das and it is also evident from PW-12 that she was received by appellant No.2, Mithun Das at Kolkata Airport and taken to Nabadwip in the friends house of appellant No.2. From the conduct and relation of PW-12 with the present petitioner it is very much clear that relationship between PW-12 and the present petitioner is deep love and there is no such inducement of force from the part of the present petitioner in respect of abduction took place with the intent that PW-12 may be seduced as a result of her abduction and also from the evidence of PW-12 it is very much evident that there is no forceful and forcibly done anything by the present petitioner at any time during the course of stay at West Bengal and there is no evidence to show that neither any force was applied in the alleged kidnapping of PW-12 nor she was at any point of time induced by the present petitioner to go with him. It is very much evident that PW-12 had gone to Kolkata by flight alone and as such, allegation of abduction, kidnapping or inducement is wrong, illegal and perverse and not tenable in the eye of law.

15. The court below as well as the appellate court ought to have held that the present petitioner was never liable to commit any offence under Section 366 of the IPC and there is no proof that the present petitioner induced the PW-12 to go for any place. It is further stated that PW-12 voluntarily fled away to her grandmother's house at Kolkata with all relevant documents including Aadhar Card and it is further stated that when the relatives of PW-12 brought her at Tripura, they did not inform the matter either to any PS of West Bengal or to Airport PS at Agartala including the name of the persons namely Paltu, Binoy, Biplab and Mithun who forcibly took her at Airport from Mirja School Chowmuhan and boarded her a flight at Agartala Airport for Kolkata and as such, the order of conviction and sentence passed by the Trial Court as well as affirmed by the appellate Court in respect of the present petitioner is liable to be set aside.

16. On the contrary, Mr. S. Ghosh, learned Addl. P.P. has vehemently opposed the submission of the learned counsel appearing for the petitioner and prays for dismissal of the petition.

17. Having heard the learned counsel and on scrutinized the records this court finds sufficient force in the submission of Ms. S. Debbarma, learned counsel appearing for the petitioner and accordingly, the present Criminal Revision stands allowed to the extent as indicated above.

**CHIEF JUSTICE(ACTING)**