

IN THE HIGH COURT OF TRIPURA
AGARTALA

W. P.(Crl) No.03 of 2015

Petitioner:

Sri Sunil Ch. Debnath,
S/o. Late Dayal Ch. Debnath,
Resident of Village & PO - Dupirband,
P.S. Dharmanagar,
District – North Tripura.

BY ADVOCATE:

Mr. A. Bhowmik, Advocate.

– Versus –

Respondents:

1. The State of Tripura,
Represented by the Secretary-cum-Commissioner to the
Department of Home,
Government of Tripura, P.O. Kunjaban,
P.S. New Capital Complex,
District- West Tripura.
2. The Superintendent of Police,
North Tripura District,
PO & PS – Dharmanagar,
District – North Tripura.
3. The Officer-in-Charge of the Dharmanagar Police Station,
PO & PS – Dharmanagar,
District – North Tripura.
4. Yakub Ali @ Ayab Ali,
S/o. Unknown,
Resident of Village & PO – Dupirband,
P.S. Dharmanagar,
District – North Tripura.

BY ADVOCATE:

Mr. A. Ghosh, PP.

B-E-F-O-R-E
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE MR.JUSTICE S. TALAPATRA

Date of hearing and delivery : **09.03.2015**
of judgment and order

Whether it is fit for reporting : NO

JUDGMENT & ORDER (ORAL)

(Deepak Gupta, CJ)

By means of this writ petition, the petitioner who is the father of the victim has prayed for grant of the following relief:

"To direct the respondents to carry out further investigation in regard to Case No.44 of 2003 registered with Police Station-Dharmanagar under Section 366(A) read with Section 34, IPC and also to add Section 302, IPC as one of the charges."

02. The petitioner-complainant lodged a complaint with the police station on 22nd March, 2003 that on 20th March, 2003 at about 10 a.m. his minor daughter aged about 16 years went to school but did not return from the school. He lodged information about her being missing with the police station on the next day. According to him, he later came to know that the main accused Jalal Uddin with the help of Mst. Alekjan Bibi, Mst. Attari Bibi and Yakub Ali had kidnapped his daughter when she was on her way to school.

03. The investigation was carried out and as per the report filed by the petitioner along with this case, during investigation it was revealed that the victim had voluntarily left her house with the principal accused Jalal Uddin. According to the investigation, she had gone with him to Bangladesh with a view to marry him. In the same report, it is mentioned that Ayub Ali alias Yakub Ali who is a Bangladeshi national might have helped them to cross the border. The other two accused i.e. Mst. Alekjan

Bibi and Mst. Attari Bibi also helped principal accused Jalal Uddin to kidnap the victim girl.

04. On these facts, a case was registered under Section 366(A) against the four accused. Trial could be conducted only against Mst. Alekjan Bibi and Mst. Attari Bibi since the other two were declared absconder. It is submitted that Mst. Alekjan Bibi was convicted for having committed an offence punishable under Section 365, IPC read with Section 109 of the IPC. Mst. Attari Bibi was acquitted of all the charges.

05. It appears that Yakub Ali alias Ayub Ali again entered India and he has been arrested and his trial with regard to the same offence was supposed to commence on 2nd March, 2015. The question that arises is whether this Court at this stage should order further investigation in the matter or not and that too mainly on the ground that since the victim has not been heard by her family members for the last 13 years, she may be presumed to have been murdered by the accused.

06. There can be no presumption of murder. This is not a normal case falling under Section 108 of the Evidence Act. The investigation has revealed that the victim had voluntarily gone with the accused. It is true that since she was a minor, one of the accused was convicted but it is not a case where it has been found that she had been forcibly taken away. She was 16 years old and according to the investigation, her intention was to marry the main accused Jalal Uddin. Therefore, we fail to understand how we can even raise a presumption that she has been murdered. She may be living in Bangladesh for all we know and unless some material is placed before us to remotely indicate

that she has been murdered, we cannot order further investigation in the matter. It is for the Judge who is conducting the trial to see what action has to be taken.

The writ petition is therefore rejected.

JUDGE

CHIEF JUSTICE