

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 12.01.2015

CRL.REV.P.19/2015

THE STATE (NCT OF DELHI)

..... Petitioner

versus

SANJAY & ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Neeraj Kumar Singh, APP
For the Respondents : None

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J (ORAL)

CRL.M.A.395/2015 (Exemption)

The exemption is granted subject to all just exceptions.

The application is disposed of accordingly.

CRL.REV.P.19/2015

1. The present is a Revision Petition under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) assailing the order dated 22.09.2014

passed by Shri Rajneesh Gupta, ASJ-01, Tis Hazari Courts, Delhi whereby the respondents/accused persons have been discharged in FIR No.263/2013, Police Station Uttam Nagar, under Sections 363/368/120-B IPC.

2. On 21.05.2013 on the complaint of Smt. Dhanesh Devi, mother of the prosecutrix, the aforesaid FIR was registered. After completion of the investigation the Investigating Officer filed charge sheet against the respondents. Thereafter, upon hearing the arguments on charge, the impugned order dated 22.09.2014 has been passed.

3. According to the counsel for the State, the learned Additional Sessions Judge has failed to appreciate that the prosecutrix was 13 years of age at the time of the incident/offence and that, therefore, her consent was immaterial.

4. In the present case, it is observed that as recorded by the learned Trial Judge the prosecutrix in her statement under Section 164 Cr.P.C. had categorically stated that she had gone with the accused namely Charan Singh @ Guddu of her own free will and had married the latter with her free consent. The prosecutrix had further stated in her above statement that she was 19 years of age. In my view, therefore, the submission made by the petitioner, does not hold water.

5. I agree with the finding of the learned Trial Judge that at the stage of charge the Court has to see whether from the material on record, a *prima facie* case is made out against the accused or not. I further notice that the learned Trial Court has extracted the relevant paragraph of the decision of the Hon'ble Supreme Court in AIR 1965 SC 942 which reads as follows:-

“It must, however, be borne in mind that there is a distinction between “taking” and allowing a minor to accompany a person. The two expressions are not synonymous though we would like to guard ourselves from laying down that in no conceivable circumstances can the two be regarded as meaning the same thing for the purpose of S.361 of the Indian Penal Code. We would limit ourselves to a case like the present where the minor alleged to have been taken by the accused person left her father's protection knowing and having capacity to know the full import of what she doing voluntarily joins the accused person. In such a case we do not think that the accused can be said to have taken her away from the keeping of her lawful guardian. Something more has to be shown in a case of this kind and that is some kind of inducement held out by the accused person or an active participation by him in formation of the intention of the minor to leave the house of the guardian.”

6. From a conspectus of the above, it is clear that the prosecutrix went with the accused Charan Singh @ Guddu and married him with her own free

consent and that the said accused did not influence the decision of the prosecutrix to go with him in any manner whatsoever.

7. Consequently, I agree with the finding of the learned Trial Court that there is no *prima facie* material to come to a conclusion that offences under Sections 363/366/368/120B IPC are made out against the accused Charan Singh @ Guddu. Further, as found by the learned Trial Court, there is no material to link the co-accused Sanjay with the alleged offence.

8. In view of the foregoing, I find that the present criminal revision petition is devoid of merit. It is accordingly dismissed.

SIDDHARTH MRIDUL, J

JANUARY 12, 2015

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