

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 944 of 2016**

Shisir Shrivastava, aged about 47 years, son of Late V. K. Shrivastava, R/o Sargipal Para, P.S. Kotwali, Kondagaon, Tahsil and District Kondagaon (CG)

---- Petitioner**VERSUS**

State of Chhattisgarh through Station House In-charge, P.S. Kotwali Kondagaon, Tahsil and Dist. Kondagaon (CG).

---- Respondent

For Petitioner	:	Shri Ashish Shrivastava, Advocate.
For Respondent/State		Smt. M. Asha, Panel Lawyer.

Hon'ble Shri Justice P.Sam Koshy**Order On Board****02/09/2016**

1. The instant petition has been preferred seeking for setting aside of the order dated 14.06.2016 passed in S. T. No.120 of 2015 whereby the Special Judge (Atrocities), Kondagaon has rejected the application under Section 227 of CrPC preferred by the petitioner.
2. The case in brief is that on 12.02.2015 at around 8 p.m. the petitioner is said to have forcibly abducted the complainant Smt. Rukdei Korram W/o Shri Jayatu Korram, a member belonging to reserved category, from the hospital where she was hospitalized, on the pretext that her husband was waiting for her in a four-wheeler out side the hospital and forced her into the car and took her to an isolated area. It is alleged that the said abduction was done for forcing the complainant for casting vote in favour of a particular candidate in the upcoming Janpad Panchayat election.

3. After investigation, the Police registered the offence under Sections 365, 384, 342 of IPC and Section 3 (1) (a) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short "SC ST Act") against the petitioner. During the course of trial, the petitioner moved an application under Section 227 of CrPC seeking for discharge from the offence levelled against him. The Court below after considering the facts and circumstances of the case vide impugned order dated 14.06.2016 discharged the petitioner from the offence under Section 384 IPC and 3 (1) (a) of SC ST Act, however, took cognizance only for the offence under Section 365 and 342 of IPC.
4. Counsel for the applicant submits that the Court below has committed an error of law in taking cognizance for the offence under Sections 365 and 342 of IPC. According to him, a plain reading of the statement of the victim even these sections are not made out in any manner against the petitioner. Counsel for the petitioner referring to the statement of the victim submits that there is no iota of any proof of force being used against the petitioner while firstly bringing the victim down through the stairs of the hospital to the four-wheeler, secondly making her sit in the four-wheeler and thirdly taking her to an isolated place. He submits that statement of the victim also does not reflect any sign of protest or resistance made by the victim so as to bring home the offence against the petitioner for the Court to take cognizance. He further submits that once when the Court below reached to a conclusion that there was no material available in respect of the offence under Section 384 IPC and also under Section 3 (1) (a) of SC ST Act, the Court below has committed an error in taking cognizance for the offence under Sections 365 and 342 IPC without there being any material whatsoever. He further submits that when there are two opinions, the option in favour of the accused should have been taken by the Court below. Relying upon the judgment of the Supreme Court in the

matter of P. Vijayan Vs. State of Kerala and Another ¹ counsel for the petitioner submits that once when the Court below found that there was no material to bring home the offence under Sections 384 IPC and 3 (1) (a) of SC ST Act against the accused, the availability of the ingredients necessary for doubting the offence under Section 365 IPC was also not present in the facts of the present case. This aspect has also not been properly appreciated by the Court below. Thus, counsel for the petitioner prays for quashment of the impugned order.

5. Per contra, state counsel submits that there were prima facie materials available on the statement of the victim herself which were sufficient for the Court below for taking cognizance against the petitioner for the offence under Sections 365 and 342 of IPC. So far as the offence under Sections 384 IPC and 3 (1) (a) of SC ST Act are concerned, the Court below has granted an order in favour of the petitioner which by itself establishes the fact that the Court below has duly applied its mind at the time of passing of the order and therefore, the same does not warrant any interference.
6. Having heard the contentions put forth by the counsel appearing on either side and on perusal of the record what primarily is to be seen is the statement of the victim Smt. Rukdei Korram. The victim in her statement has very categorically narrated the entire incident wherein the name of the petitioner is there. In the said narration she has stated that while she was hospitalized, the petitioner came to her and told that her husband had asked him to bring her to a different place. On the said false pretext, the petitioner brought her down through the stairs of the hospital to the four-wheeler, forcefully made her sit in the said four-wheeler and took her to an isolated place. This clearly indicates that there is some material available for taking cognizance against

¹ (2010) 2 SCC 389

the petitioner and it cannot be said that there is no evidence whatsoever.

7. So far as taking cognizance against the petitioner by the Court below is concerned, all that the Court has to see is that there has to be some prima facie material available on the charge sheet so as to bring home the offence cognizable. In the instant case, the Court below has found that the statement of the victim itself establishes the fact that the petitioner had gone to the hospital where the victim was hospitalized and on the false pretext brought the victim down to the vehicle, made her sit in the said vehicle and then she was taken to an isolated area and was confined with an object forcing her for casting vote to a particular candidate. All these facts are sufficient materials available in the case diary for the Court below to have taken cognizance. This Court in exercise of its extraordinary powers under Section 482 CrPC at this stage does not further conduct a mini trial or roving inquiry to find out whether the avement made by the victim is correct or not.
8. The Supreme Court in the case of Amit Kapoor Vs. Ramesh Chander and Another reported in (2012) 9 SCC 460 has clearly laid down the principle that inherent as well as revision jurisdiction should be exercised cautiously. At the stage of taking cognizance, the Court is concerned not with the proof but with a strong suspicion that the accused has committed an offence, which if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not be applied at that stage.
9. In the case of N. Soundaram Vs. P. K. Pounraj and Another, reported in (2014) 10 SCC 616 the Supreme Court in paragraph 13 has categorically held that:

It is well settled by this Court in a catena of cases that the power under Section 482 CrPC has to be exercised sparingly and cautiously to prevent the abuse of process of any court and to secure the ends

of justice. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should refrain from giving a prima facie decision unless there are compelling circumstances to do so. Taking the allegation and the complaint as they were, without adding or subtracting anything, if no offence was made out, only then the High Court would be justified in quashing the proceedings in the exercise of its power under Section 482 CrPC. An investigation should not be shut out at the threshold if the allegations have some substance.”

Again in the case of Vinod Raghuvanshi Vs. Ajay Arora and Others reported in (2013) 10 SCC 581 the Supreme Court has held :

“It is a settled legal proposition that while considering the case for quashing of the criminal proceedings the court should not “kill a stillborn child”, and appropriate prosecution should not be stifled unless there are compelling circumstances to do so. An investigation should not be shut out at the threshold if the allegations have some substance. When a prosecution at the initial stage is to be quashed, the test to be applied by the court is whether the uncontroverted allegations as made, prima facie establish the offence. At this stage neither can the court embark upon an inquiry, whether the allegations in the complaint are likely to be established by evidence nor should the court judge the probability, reliability or genuineness of the allegations made therein. More so, the charge-sheet filed or charges framed at the initial stage can be altered/amended or a charge can be added at the subsequent stage, after the evidence is adduced in view of the provisions of Section 216 CrPC.”

10. For the aforesaid reasons this Court is of the opinion that no strong case is made out for interference with the impugned order. The CrMP, thus, being devoid of merit is dismissed.

Sd/-
(P.Sam Koshy)
JUDGE