

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.15624 OF 2016

ORDER:

This Criminal Petition is filed to quash the proceedings in S.C.No.290 of 2015 on the file of Assistant Sessions Judge, Adoni for the offences punishable under Section 366-A of I.P.C.

The main allegation made against the petitioner is that on receipt of complaint dated 14-10-2014 at 22.00 hours from the defacto complainant A.Joseph, police registered the same as a case in Cr.No.172 of 2014 and investigated into the same and during investigation, police examined as many as five witnesses and filed charge sheet against the petitioner for the alleged offence punishable under Section 366-A of I.P.C.

Present petition is filed on the ground that the allegations made in the charge sheet would not attract only Sections 363 and 366 of I.P.C. and therefore, petitioner cannot be tried for the offence punishable under Section 366 of I.P.C.

It is brought to the notice of this court that trial court framed charge against the petitioner for the offence punishable under Section 366-A of I.P.C. but not under Section 363 of I.P.C.

It is pertinent to refer Section 366-A of I.P.C. which reads as follows:

“Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, force or seduced to illicit intercourse with

another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine."

Section 363 deals with punishment for kidnapping defined under Section 359 of I.P.C. which reads as follows::

Section 359 of I.P.C.

"Kidnapping is of two kinds:- Kidnapping from (India), and kidnapping from lawful guardianship.

Section 361 reads as follows:

"Whoever takes or entices any minor under (sixteen) years of age, if a male, or under (eighteen) years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship."

Explanation:- "The words "lawful guardian" in this section include any person lawfully entrusted with the care or custody of such minor or other person."

The allegation made in the Charge sheet disclose that the accused left victim girl and forcibly removed from the lawful custody and kidnapped her to Hyderabad where he spent two days along with victim girl but there is no allegation of seducing the victim girl to any other person but in such a case, the court can frame charge at appropriate stage, even otherwise, if the court finds that victim girl was not seduced to illicit intercourse with another person, the court can convict the accused for the appropriate charge where lesser

punishment is prescribed when charge is framed. However, this court can exercise powers under Section 482 of Cr.P.C. in view of principles laid down by the apex court in *HARYANA v. BHAJAN LAL* ⁽¹⁾ wherein the apex court held at guideline No.1 which reads as follows:

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

Therefore, it is not a ground to quash proceedings at this stage. However, if any application is made by the petitioner, the trial court is directed to frame appropriate charge based on the material available on record.

With the above direction, this Criminal Petition is disposed of.

As a sequel to the disposal of this petition, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE M.SATYANARAYANA MURTHY

Dated 2-11-2016.

Dvs.

¹ 1992 Supplement (1) SCC 335

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