

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

CRM-M No.37792 of 2016.

Date of Decision: 21.10.2016.

Khem Chand and another

....Petitioners.

VERSUS

State of Punjab and another

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Balbir Singh Sewak, Advocate for the petitioners.

SNEH PRASHAR, J.

This petition filed invoking the provisions of Section 482 of the Code of Criminal Procedure (for short, "Cr.P.C."), is for quashing the order dated 05.10.2016 (Annexure P-5) passed by learned Additional Sessions Judge, Sangrur, whereby the order dated 10.06.2016 (Annexure P-4) passed by learned Sub Division Judicial Magistrate, Malerkotla was set aside.

The submissions made by Mr. Balbir Singh Sewak, learned counsel representing the petitioners have been considered.

It is submitted by learned counsel that commission of offence under Section 365 of the Indian Penal Code (for short, "IPC") was not made out from the allegations levelled by the complainant as in his statement before the police and also during his deposition in the Court, he had simply stated that the accused dragged him into the vehicle, took him to some distance and threatening him of dire consequences showing a revolver threw

to cause the complainant to be secretly and wrongfully confined was made out. As such, while learned Sub Divisional Judicial Magistrate, Malerkotla, rightly held that there was no ground to allow the application of the prosecution to charge-sheet the petitioners under Section 365 IPC, learned Additional Sessions Judge, Sangrur wrongly held that there was sufficient material for charge-sheeting the petitioners under the said Section.

Perusal of the order dated 10.06.2016 passed by learned Sub Divisional Judicial Magistrate and the order dated 05.10.2016 passed by learned Additional Sessions Judge, Sangrur indicates that the prosecution had filed its final report against the petitioners alleging commission of offence under Sections 341, 323 and 506 read with Section 34 IPC. Accordingly, the charge-sheet was served on the petitioners and two witnesses namely PW1 complainant Sukhdev Singh and PW2 Balram, an eyewitness were examined. In the light of deposition of the witnesses, the prosecution filed an application under Section 216 Cr.P.C. for alteration of charge in order to charge-sheet the petitioners under Section 365 IPC. Learned trial Court dismissed the application, but in the revision petition preferred by the complainant, learned Additional Sessions Judge vide order dated 05.10.2016 set aside the order dated 10.06.2016 of learned trial Court and allowed the application of the prosecution.

Perusal of the order of learned Additional Sessions Judge shows that both PW1 complainant Sukhdev Singh and PW2 Balram, the eyewitness had unequivocally stated that the accused had dragged the complainant and forcibly put him in their vehicle and had driven away. The complainant had also stated that when he was being taken in the vehicle,

threatened him of dire consequences, if he tried to come in their way in future. May be that after travelling for some distance, the accused stopped the vehicle and threw the complainant down, but the occurrence was said to have taken place after 10:30 p.m. and the deposition of the witnesses was prima facie sufficient material for charge-sheeting the petitioners for commission of offence under Section 365 IPC when they had abducted the complainant with an intent to cause him to be secretly and wrongfully confined.

Thus, there being no merit in the petition, it is hereby dismissed.

(SNEH PRASHAR)
JUDGE

21.10.2016

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Whether speaking/ reasoned : Yes

Whether Reportable : No