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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision : May 02, 2016*

+ **CRL.A. 861/2001**

MUNNA SAXENA Appellant
Represented by: Mr.Dinesh Kumar Chawla, Advocate
with Mr.Kaushik and Ms.Satyavati,
Advocates

versus

STATE Respondent
Represented by: Mr.Varun Goswami, APP

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

CM No.7042/2016

1. On account of the appellant not repeatedly appearing in spite of warrants served to secure his presence and undertaking given through his counsel that appearance would be made as and when the appeal reaches for hearing, no appearance being made on behalf of the appellant on April 22, 2016, we had issued non-bailable warrants to secure appellant's presence with a direction that if apprehended he shall be produced in Court within 24 hours.
2. The warrants have not been executed.

3. Instant application has been filed praying for cancellation of the non-bailable warrants issued. Appellant is present in person.
4. Since the appeal had reached for hearing and can be heard today itself, learned counsel for the appellant states that the appeal may be heard right now.
5. Accordingly, non-bailable warrant issued on April 22, 2016 to apprehend the appellant and produce him before us is recalled.

CRL.A.No.861/2001

1. The appellant has been convicted for having committed an offence punishable under Section 364A IPC, which reads as under:-

“364A. Kidnapping for ransom, etc. – Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organization or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine.”

2. The Section falls for interpretation in the instant appeal for the reason Abhishek Kumar the minor child of PW-1 and PW-2 who was kidnapped has simply deposed that since he knew the appellant because he was a tenant in his parents' house he voluntarily went away with him. He has not deposed that the appellant did anything which could give rise to an apprehension that he would be put to death or caused hurt to him. PW-1 and PW-2, the parents of Abhishek Kumar have deposed that the first call

received in their house after their son was missing was attended to by Smt.Kanchan PW-2 who recognized the voice of the appellant when he rang up enquiring about her husband and disconnected when she asked what was the purpose of the call, a fact corroborated by Anil Singh PW-1, who stated that another call was received at 8:00 AM the next day and from the voice he recognized it to be that of the appellant who demanded ₹10,00,000/- (Rupees Ten Lacs only) as ransom money to release his son. Neither parent has deposed that the appellant threatened to kill or hurt their minor son or did something which could give rise to a reasonable apprehension in their mind that their son could be killed or hurt.

3. The landline number 5038739 in the house was having caller identification facility and from which the Investigating Officer noted the calling number and tracked it to an STD Booth in Farukhabad, which was kept under observation and it is the claim of the prosecution, successfully proved through SI Ravi Kumar PW-8, that through the owner of the booth of the STD the appellant was identified as the caller and the appellant was arrested and made a disclosure statement that the child was in the house of his relative in village Kanhau, wherefrom the child was recovered. Slip Ex.P-1 concerning a call made by the appellant from the STD Booth in question was recovered and the number called was 5038739 installed in the house of PW-1 and PW-2.

4. No blemish has been shown in the testimony of the prosecution witnesses, all of whom have withstood the test of cross-examination.

5. In fact from the suggestion given to PW-2 that the accused took Abhishek to his village with consent of PW-2 is proof of the admission by the appellant of having taken Abhishek with him. Even in his statement

under Section 313 Cr.P.C. the appellant has admitted said fact stating that PW-2 has got him falsely implicated by voluntarily sending his son with him and then lodging a false complaint. Motive alleged is a business dispute.

6. No evidence has been led by the appellant of any business dealings and we see no reason why PW-2 would lodge a false complaint after entrapping the appellant.

7. The prosecution has therefore successfully established that the appellant enticed Abhishek and took him away from the lawful guardianship of his parents and thus committed the offence of kidnapping.

8. The question arises whether Section 364A IPC is attracted.

9. We have reproduced the Section in para 1 above. It is a single sentence paragraph punctuated with commas (,). The word ‘*or*’ has been used eight times and argument of learned counsel for the State is that the word ‘*or*’ is always treated as disjunctive and therefore if it is proved that kidnapping or abduction was intended to secure ransom and ransom call was made, the offence committed would be punishable under Section 364A IPC and it does not matter whether the person abducted or kidnapped was threatened to be put to death or hurt or was treated by the accused in a manner which gave rise to a reasonable apprehension of hurt or death in a person from whom ransom was demanded.

10. Now, the Section can be split (i) *Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction* (ii) *and threatens to cause death or hurt to such person*, (iii) *or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt*, (iv) *or causes hurt or death to such person* (v) *in order to compel the Government or any foreign State or international inter-*

governmental organization or any other person to do or abstain from doing any act (vi) or to pay a ransom, (vii) shall be punishable with death, or imprisonment for life, and shall also be liable to fine.

11. The first two limbs of the sentence, and in particular the use of the word ‘and’ to join the two limbs, shows that the ingredient of the offence is kidnapping or abducting any person with a threat to cause death or hurt to such person. The third limb, which uses the word ‘or’ as the beginning of the part of the sentence is clearly contemplating a situation alternative to the second limb of the sentence i.e. the accused by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt i.e. there may be no threat to cause death or hurt but the conduct of the accused may be such that a reasonable apprehension arises. The fourth limb relates to a situation where hurt or death of the person kidnapped or abducted is caused as a matter of fact. Thus, the first four limbs of the sentence are one part of the offence with limb two, three and four being in the alternative. The next part of the sentence is the sequitur to the earlier i.e. the threat to cause death or hurt or conduct giving rise to a reasonable apprehension to put to death or hurt or the actual hurt or death caused i.e. the said acts are directed to compel the Government or any foreign state or international inter-governmental organization or any other person to do or abstain from doing any act or to compel somebody to pay ransom.

12. Thus, the argument advanced by learned counsel for the State is rejected. The Section must receive a strict interpretation because the consequences are severe. The sentence prescribed is either death or imprisonment for life.

13. We are fortified in the view we have taken with reference to the

decisions of the Supreme Court reported as (2006) 13 SCC 36 Anil @ Raju Namdev Patil Vs. Administration of Daman & Diu and JT 2007 5 SC 48 Vishwanath Gupta Vs. State of Uttranchal wherein the view taken was that to make out the offence punishable under Section 364A IPC there first has to be an abduction or kidnapping thereafter a threat or an apprehension caused by conduct that if the demands raised were not met the victim would be hurt or put to death.

14. We accordingly set aside the impugned judgment dated November 01, 2001 convicting appellant for the offence punishable under Section 364A IPC and convict him for the offence punishable under Section 363 IPC.

15. On the sentence, we note that the appellant has undergone imprisonment for 19 months. Conscious of the fact that the offence is punishable with a sentence of up to 7 years and a child aged 10 years was kidnapped, we restrict the sentence to the period already undergone for the reason the offence relates back to the year 2001. 16 years have gone by. The appellant was fortunate for the trial to be over in less than a year of the date of the offence which is January 18, 2001. The sentence was suspended on May 16, 2002 in appeal. In the meanwhile the appellant has got married and has two minor children to support. The nominal roll shows that the appellant was not involved in any other criminal activity and the instant incident was the only brush which he had with criminal law.

16. For the offence punishable under Section 363 IPC committed by the appellant we sentence him to undergo imprisonment for the period already undergone.

17. Copy of this decision be sent to the Superintendent Central Jail Tihar for his record.

18. TCR be returned.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

MAY 02, 2016
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