

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 325 OF 2018

Valid alias Munna alias Jiju
Ahmad Manjur Ahmad
Occ.: Business, Aged about 48 years,
Indian inhabitant of Silvassa,
Dist-Dadra & Nagar Haveli,
R/o. Bavisa Falia, Silvassa of
Dadra & Nagar Haveli.

**.. Applicant/
(Orig.Accused No. 1)**

Vs.

1. The Administration of Dadra &
Nagar Haveli (The Union Territory)
to be served through The
Public Prosecutor at Mumbai, having
office in the precinct of High Court
Bombay.
2. The Sr. Inspector of Police
Silvassa Police Station,
Dadra & Nagar Haveli.

.. Respondents

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Mr. Murtuza Nazmi a/w Mr. A.A. Siddiquie I/b A.A. Siddiquie &
Associates, Advocates for the applicant.
Ms. P.H. Kantharia, Advocate for Respondent No. 1.
Mrs. N.S. Jain, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 25th JUNE, 2018.

P.C.:-

1. The applicant has challenged the order dated 27th October, 2017 passed by the Sessions Court, Dadra and Nagar Haveli, Silvassa in Sessions case No. 08 of 2017 framing charge against the applicant.

2. The prosecution case is that First Information Report was registered with Silvassa Police Station on 24th January, 2017 vide C.R. No. 11 of 2017. The offences were registered under Section 394, 364-A, 328, 342 and 506 of IPC. It is alleged that the complainants son Bharat Shroff was abducted by the accused. He was detained, robbed of valuables and there was a demand of Rs. 2 Crores. The investigation was conducted by the police. The applicant was arrested on 30th January, 2017. On completing investigation charge sheet was filed on 29th April, 2017.

3. The charge was framed by the Sessions Judge on 27th October, 2017 for offences punishable under Section 394 read with 34 IPC, 364A of IPC, 328 read with 34 IPC, 342 IPC and 506 read with 34 IPC. The charge framed by the trial Court reads as follows :-

“ The on 23.01.2017 at about 18.15 Hours in furtherance of your common intention at Nava Falia, Naroli village, sprayed and made unconscious Shri Bharat Pramod Shroff and in Inova Vehicle No.

DN 09 K 0402 forcibly made him to sit and started beating with first blows and kicks removed by purse from the pocket and taken away Rs. 1,500/- to Rs. 2,0000/-; also PAN card, Driving License and copy of photographs and other office papers kept in the vehicle and tied wire kept in the vehicle and tied my both hands and also torn shirt causing bleeding injuries and thereby have committed an offence punishable under Section 394 r/w 34 of Indian Penal Code and within my cognizance;

That you all on the same date kept the victim Shri Bharat Pramodkumar Shroff in detention and threatened to cause his death and accused Waleed @Munna @Jiju Ahmed Manjur Ahmed called Mahesh Murlidan Shroff to pay ransom of Two Crores rupees and thereby committed an offence punishable under Section 364A of Indian Penal Code and within my cognizance;

That you all and furtherance of your common intention spread some liquid on the face of the said Shri Bharat Pramodkumar Shroff with intention to commit an offence and that you have thereby committed an offence punishable under Section 328 r/w 34 of Indian Penal Code and within my cognizance;

That you all and in furtherance your common intention took the said victim Bharat P[ramodkumar Shroff in the room of accused Waleed in Room No. 4 at Bavisia Falia wrongfully confined him for three days and thereby committed an offence punishable under Section 342 of Indian Penal Code and within my cognizance;

That on the same day time and place you all in furtherance of your common intention also committed criminal intimidation by threatening the said Bharat Pramodkumar Shroff with threat to cause death and thereby you all committed and offence punishable under Section 506 r/w 34 Indian Penal Code and within my cognizance;

And I hereby direct that you all be tried in the above charges.”

4. In pursuant to framing of charges, the applicant has preferred this Revision Application challenging the order framing charge. There was a delay of 11 days in preferring this application which has been condoned by order dated 13th June, 2018.

5. Learned Counsel for the applicant submits that, the trial Court has committed an error in framing the charge against the applicant. The applicant has been falsely implicated in the said crime. It is submitted that the offence under Section 364A of IPC is not made out against the applicant and therefore, the Court has committed an error while framing the charge. It is submitted that there is no evidence to substantiate the said charge. The applicant has been falsely implicated on account of dispute between the applicant and the complainant, no role is assigned to the applicant to frame charge under Section 394 of IPC. The charge under Section 364A is not sustainable. There is no evidence to support the said charge. The version of the witness does not meet the ingredients of the charge under Section 364A of IPC, no role is assigned to the applicant for committing the said offence. It is submitted that the material on record also does not support the charge under Section 328 and 342 of IPC. It is submitted that the prosecution case is that some unknown persons spread the

spray. However, the victim traveled with unknown persons and he was in conscious condition. It is also submitted that Section 364A cannot be applied to individual person, the purport of the said provision has to be taken into consideration. The said penal provision is to be applied for kidnapping or abduction of any person for ransom and to compel the Government or State or International Inter-governmental Organization or any other person to do or abducting from doing any act or to pay a ransom. It is submitted that the object of the said penal provision is to be considered in the light of threat of death or hurt, in order to compel the Government or any Foreign State or International Inter-governmental Organization. It is submitted that the other provisions embodied under the penal code relating to kidnapping or abduction envisaged under Section 364 and 365 IPC takes care of such situations. Thus, the penal provision cannot be applied to an individual person who is allegedly kidnapped or abducted for ransom. It is submitted that the rule of ejusdem generis is to be applied where the words or language of which in a section is in continuation and where the general words are followed by specific words that relates to a specific class or category. It is submitted that the maxim ejusdem generis is attracted where the general words pertains to class genus. Reliance is placed on the decision in the case of **Union of India & Ors. Vs. Alok Kumar** decided by the

Supreme Court in Civil Appeal No. 3369 of 2010. He therefore, submitted that the order framing charge is bad in law and the same be set aside.

6. Learned Additional Public Prosecutor submitted that in pursuant to framing of charge, the evidence of the witness is already recorded by the trial Court on 19th June, 2018. Learned Counsel produced the copy of the evidence of victim recorded by the trial Court. It is submitted that when the examination-in-chief of PW-1 was recorded, the accused No. 1 filed Pursis at Exhibit-42 and made allegations against the presiding officer. It was contended that the said accused did not have faith in the presiding officers. The other accused Nos. 3 to 7 also filed Joint Pursis at Exhibit-43 and adopted the contentions raised by the accused No. 1 in Pursis Exhibit-42. It is submitted that the Court then proceeded to pass the order that the matter is kept *sine-die* till the accused obtains appropriate order under Section 407 of Cr.P.C. or until any other judicial officer joins at Silvassa and till then PW-1 was discharged. The said order is reflected on the notes of evidence produced by the Counsel for the respondent. It is submitted that in pursuant to order framing charge, the trial has commenced which is evident from the evidence recorded by the Court. It is further submitted that the Court has framed the charge on the basis

of *prima facie* evidence and there is no infirmity in the said order, as the documents clearly establishes the case for framing charge for the said offences.

7. I have perused the documents on record. After completing the investigation, charge sheet has been filed. The prosecution is relying on the statement of the complainant, statement of victim and other witnesses. The prosecution is also relying upon other evidence in the form of the Panchanama, identification parade etc. At the stage of framing charge the Court required to look into the evidence on record and whether the *prima facie* case is made out to frame the charge. In this case the trial Court has framed the charge and thereafter the evidence of PW-1 was being recorded. The interpretation of Section 364A of IPC as submitted by the Counsel for the applicant cannot be accepted. The purport of Section 364A is to prosecute and penalize the person for kidnapping or abducting any person or keeping a person in detention by executing threat to cause death or to hurt such person which gives rise to reasonable apprehension that a person who put to death or causes hurt or death to such person in order to compel the government or any other person stated therein to do abducting from doing any act or pay a ransom for the offences punishable with death or imprisonment for life and fine. The words incorporated in the said

provision are sufficient to apply, the said offence against the persons who are indulging in such activities. Thus, it cannot be said that Section 364A cannot be applied against the accused.

8. Taking into consideration all the aspects of the matter, no case is made out for granting reliefs in this application;

ORDER

- (I) Criminal Revision Application No. 325 of 2018 is dismissed.
- (ii) It is clarified that, the observations made in this order are only for considering the relief sought in this application and the trial Court shall not be influenced by the same at the time of trial.
- (iii) The application stands disposed of.

(PRAKASH D. NAIK, J.)