

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

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Judgment reserved on: 10th April, 2019

Judgment delivered on: 01st July, 2019

+ CRL.REV.P. 760/2016

SUMIT KUMAR PANDEY

..... Petitioner

versus

STATE

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr.Parag Chawla, Adv.

For the Respondents: Ms.Meenakshi Dahiya, APP for State

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

1. Petitioner impugns order on charge dated 01.06.2016 whereby charge has been framed against the petitioner under Section 364A read with Section 34 IPC and Section 170 IPC in case FIR No.66/2016, P.S. Adarsh Nagar.

2. Subject FIR was registered on the complaint of Sh. Kapil Nagpal who contended that he runs a shop which deals in food supplements. It is alleged that on 30.01.2016 at about 7 PM two persons came into his shop and asked for food supplements and they

asked him to speak to their coach. He spoke to the coach who gave him an order for food supplement. While he was talking on the phone, three persons entered the shop and all five of them started threatening him and his employees and started making a video of the shop. They stated that they were from the vigilance department of the Delhi Government and were conducting a raid on his shop and alleged that he was selling spurious food supplement. They switched off the mobile phone of the complainant and his employees.

3. Thereafter it is alleged that they took him outside his shop and threatened him to give Rs.3 lakhs failing which they would send him to jail. It is contended that they made him sit in a white colour WagonR and thereafter started roaming here and there. They also took his gold chain which he was wearing and thereafter started pressurizing him to call up his friend to get Rs.3 lakhs.

4. It is alleged that they continued to demand to pay Rs.3 lakhs failing which they threatened that they would send him to jail. It is alleged that he called up his friend who could make an arrangement of Rs.1 lakh. Said amount was given for releasing the complainant. When the complainant demanded back his gold chain, they said that he would get it back when they received the balance Rs.2 lakhs. They continued to threaten that if he made any complaint, they would send him to jail for selling spurious food supplement.

5. After investigation, charge sheet was filed under Section 364A/384/170/120B IPC. By the impugned order on charge, Trial Court has framed a charge against the petitioner under Section 364A read with Section 34 IPC for abducting the complainant for a ransom of Rs.3 lakhs by putting him under fear of causing injury by sending him to jail. Further, charge has been framed against the petitioner under Section 170 IPC for impersonating a public servant.

6. Learned counsel for the petitioner contends that no charge under Section 364A IPC could have been framed as the basic ingredients of Section 364A are *ex facie* not made out.

7. Section 364A IPC 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 organisation 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.”

8. The ingredients of Section 364A are : (i) Kidnapping, abduction or keeping a person in detention after kidnapping or abduction; (ii)

threatening to cause death or hurt to such person or by conduct giving rise to a reasonable apprehension that such person may be put to death or hurt or; (iii) causing 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.

9. Section 319 IPC defines *hurt* as causing bodily pain, disease or infirmity to any person.

10. In the present case, the allegations against the petitioner is that petitioner had abducted the complainant and threatened him to pay Rs.3 lakhs failing which he would be sent to jail.

11. Under Section 364A the basic requirement is causing of death or hurt or threatening to cause death or hurt or a reasonable apprehension that death or hurt may be caused.

12. In the present case, there is no allegation that complainant was ever threatened with bodily harm or hurt or any threat of bodily pain, disease or infirmity was extended to the complainant.

13. The Trial Court by the impugned order has noticed that there was an allegation that the complainant was put under fear of causing injury by sending him to jail. No doubt threatening someone of sending him to jail would cause injury to a person and his reputation,

however, the same would not satisfy the requirements of Section 319 IPC of causing *hurt*. Since there is no allegation that hurt or death was threatened or caused or a reasonable apprehension that hurt would occur, the ingredient of Section 364A are *ex facie* not made out.

14. The allegations against the petitioner though *prima facie* make out a case of extortion as the complainant was put in fear of injury and thereby dishonestly induced to deliver a sum of Rs.1 lakh. Accordingly, an offence under Section 383 IPC of extortion is *prima facie* made out in so far as the petitioner is concerned.

15. Accordingly, there appears to be sufficient evidence to frame a charge against the petitioner *inter alia* under Section 383 IPC.

16. In view of the above, the impugned order framing a charge against the petitioner under Section 364A IPC is clearly not sustainable and is accordingly set aside.

17. In so far as the charge under Section 170 IPC is concerned, there is *prima facie* sufficient material to show that petitioner had represented that he was an officer of the vigilance department of the Delhi Government and as such there is no infirmity in the impugned order in framing a charge under Section 170 IPC.

18. Further there is allegation of the petitioner abducting the complainant and having removed a gold chain from his person

without his consent. Further there was also demand of more money and an allegation of falsely implicating him in a criminal case and being sent to jail for which appropriate charges needs to be framed by the Trial Court.

19. In view of the above, the revision petition is partly allowed. The impugned order in so far as it frames a charge under Section 364A IPC is concerned, is set aside.

20. The matter is remitted to the Trial Court to frame appropriate charges against the petitioner in terms of the observations hereinabove.

21. List the matter before the concerned Trial Court for directions on 22.07.2019 for passing appropriate orders in terms hereof.

22. Parties shall appear before the Trial Court on the said date.

23. Petition is disposed of in the above terms.

24. Order *dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J

JULY 01, 2019

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