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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2021

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CRL.R.C.No.795 of 2019

Dhanapal,
S/o. Gopal.

... Petitioner

Versus

The State Rep. by its
The Inspector of Police,
Jalakandapuram Police Station,
Salem District.

... Respondent

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set aside the order passed by the learned Additional District (Fast Track) Court, Mettur in C.A. No.72 of 2019 dated 17.06.2019 confirming the judgment passed by the Judicial Magistrate No.II, Mettur, Salem District in C.C.No.3 of 2012 dated 06.01.2019.

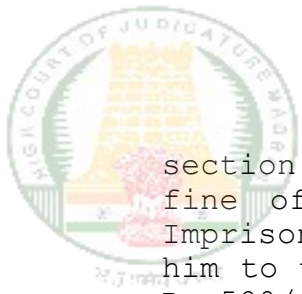
For Petitioner : Mr.A.M.Madhan Kumar
for M/s.M.Senthilkumar

For Respondent : Mr.S.Sugendran
Government Advocate, (Criminal Side)

ORDER

This Criminal Revision Petition has been filed to set aside the order dated 17.06.2019 passed in C.A. No.72 of 2019 on the file of the learned Additional District Judge, (Fast Track) Court, Mettur, confirming the judgment dated 06.01.2019 passed in C.C.No.3 of 2012 on the file of the Judicial Magistrate No.II, Mettur, Salem District.

2. The respondent police registered a case against the petitioner for the offence punishable under Sections 344, 363, 365, 506(ii) IPC and after investigation, laid a charge sheet before the Judicial Magistrate No.II, Mettur, Salem District. The learned Judicial Magistrate taken the charge sheet on file in C.C.No.3 of 2012. After trial, the learned Magistrate convicted the petitioner for the offence under Sections 344, 363, 365 and 506(ii) IPC and sentenced him to undergo one year Rigorous Imprisonment and to pay a fine of Rs.2,000/- in default to undergo one month Simple Imprisonment for the offence under section 363 IPC, and for the offence under



section 365 I.P.C, one year Rigorous Imprisonment and to pay a fine of Rs.2,000/- in default to undergo one month Simple Imprisonment, for the offence under section 344 IPC, sentenced him to undergo 6 months Simple Imprisonment and to pay fine of Rs.500/- in default to undergo four weeks Simple Imprisonment and for the offence under section 506(ii) I.P.C, sentenced him to undergo 6 months Simple Imprisonment and to pay fine of Rs.500/- in default to undergo four weeks Simple Imprisonment.

3. Challenging the said judgement of conviction and sentence, the petitioner has filed an appeal before the Principal District and Sessions Judge, Salem in CrI.A.No. 72 of 2019 and the learned Principal District and Sessions Judge made over same to the Additional District (Fast Track) Court, Mettur. The learned Additional Sessions Judge, Mettur, after hearing the arguments advanced on either side, dismissed the appeal and confirmed the conviction and sentence passed by the trial court. Challenging the said judgment of dismissal of appeal, the accused has filed the present Revision petition before this Court.

4. The learned Counsel for the petitioner would submit that in this case, there is no eye witness and also independent witness and there was a delay in filing the complaint. Further, he would submit that none of the eye witnesses has been examined. Therefore, the prosecution has not proved its case beyond reasonable doubt. Since the victim went along with the petitioner voluntarily, there is no question of threatening with dire consequence. Hence, the ingredients of Sections 364, 365 and 506(ii) I.P.C would not attract. Both the Trial and the Appellate Court failed to appreciate the evidence and simply convicted the petitioner on the ground of assumption and also sympathy, which warrants interference.

5. The learned Government Advocate would submit that the age of the victim girl is 15 years, she is studying 10th Standard, the appellant/petitioner kidnapped her without the consent of the lawful guardian. Hence, the father of the victim had filed the complaint. The victim girl is only 15 years old and the custody of the victim girl removed from the lawful guardian without their consent. The victim herself was examined as P.W.2, has clearly narrated the incident, which falls under Section 361 IPC which is punishable under section 363 I.P.C and she was taken from the lawful guardian and kept in idle and stayed in various places for more than three months. Therefore, he has committed the offence under Section 365 IPC also and also the appellant has threatened the victim that not to disclose anybody, hence he was committed the offence under Section 506 (ii) IPC also. Since the victim was taken from the custody of the lawful guardian without their consent and detained her unlawfully for more than 110 days therefore, he has also committed the offence under section 344 IPC and therefore all the ingredients under



Sections 361, 365, 344 and 506(ii) I.P.C would attract and the trial Court rightly appreciated the entire evidence and also convicted him. There is no reason to interfere with the judgment of the Courts below.

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6. Heard the learned counsel for the petitioner and the learned Government Advocate (Criminal Side) appearing for the respondent and perused the records.

7. The case of the prosecution is that there was a land dispute between the families of the petitioner and the victim and often they quarrel with them. On 15.04.2009 when the victim girl came out of her house to attend nature's call, the petitioner kidnapped the victim girl and secretly confined her in various places. Hence the complaint.

8. The Trial Court has framed the charge against the petitioner for the offence under Sections 344, 363, 365, 506(ii) IPC, and in order to substantiate the charge, on the side of the prosecution before the Trial Court as many as 12 witnesses were examined and 5 documents were marked. No material object has been exhibited. On the side of the defence, no oral and documentary evidence was produced. Out of the 12 witnesses, P.W.1 is the father of the victim, has spoken about the missing of P.W.2 and also gave a complaint Ex.P1 to the respondent Police. He has spoken that on 15.04.2019, his daughter was missing and found that the appellant one who kidnapped his daughter and he stayed with the victim for more than 115 days and kept her in secret place and also not disclosed the place. The victim was examined as P.W.2, has spoken about that she left with the petitioner and stayed with him for more than 115 days in various places. P.W.4 is the Uncle, P.W.5 is the grandfather and P.W.3 is the mother of the victim/wife of P.W.1. Therefore, all the witnesses have spoken about P.W.2 was kidnapped by the petitioner from the lawful guardian without their consent and detained her for about 3 months and therefore from the evidences of P.Ws.1 and 2, the prosecution has proved its case beyond reasonable doubt and in order to prove the age of the victim, Ex.P3 the age certificate was produced and from the evidence of the P.W.1 and P.W.2 and Ex.P3, it is found that the victim has not completed 18 years and she is a minor. The date of birth of the victim is 30.05.1994, Ex.P3 shows the date of the occurrence is 15.04.2009, therefore from Ex. P3 and Ex.P1 complaint, it clearly shows that the age of the victim is 15 years and not completed 18 years and she was a minor. From the evidence of P.Ws.1 to 5 clearly shows that the appellant/petitioner took the custody of P.W.2 from the lawful guardian without their consent and kept the P.W.2 idle in various places for more than 100 days. Therefore, the prosecution proved its case. Since the custody of minor girl was taken by the petitioner from the lawful guardian without their consent, ingredients of section 361 I.P.C is made out which is punishable under Section 363 IPC and since the



custody of P.W.2 was taken by the petitioner and kept her idle in a secret place for more than 110 days, therefore he has committed offence under Section 344 IPC and 365 IPC and since the evidence of P.W.2 clearly shows that she was threatened by the petitioner, therefore he has committed the offence under Section 506(ii) I.P.C and therefore on reading the entire materials especially the evidences of P.W1 to P.W5 and also Ex.P3, the age certificate, this Court also finds that P.W.2 is a minor and not completed age of 18 years and custody of the minor girl was taken by the petitioner from the lawful guardian without their consent and detained her in a secret place for more than 110 days, therefore the Courts below has rightly appreciated the evidences and convicted him for the charged offence.

9. Since this Court is a revisional court, it cannot re-appreciate the entire evidence and exercise the power of either the trial court or the appellate court and give the independent views on fact findings. This Court, while exercising revisional jurisdiction, has to find out as to whether any perversity in appreciation of the evidence by the trial court or the appellate court. On a reading of the entire materials, this Court finds that no perversity in appreciation of the evidence, especially when P.W.1 and P.W.2 have clearly stated that victim girl was missing at the age of 15 years and the petitioner one who has kidnapped her and from the evidence P.W.2, it is found that the petitioner has taken the custody of the victim from the lawful guardian without their consent and kept her secretly for more than 110 days and also threatened her and intimidated her.

10. This Court finds that there is no perversity in appreciation of the evidence by both the Courts below and there is no reason to interfere with the findings of the both the Courts below. Therefore, under this circumstances, this Court finds that there is no merit in the revision and the same is liable to be dismissed. Accordingly, the Revision Case is dismissed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional District Judge,
Additional District (Fast Track) Court,
Mettur.



2. The Judicial Magistrate No.II,
Mettur,
Salem District.

3. The Inspector of Police,
Jalakandapuram Police Station,
Salem District.

4. The Public Prosecutor,
High Court,
Madras.

+1cc to Mr.M.Senthil Kumar, Advocate, S.R.No. 45939

CRL.R.C.No.795 of 2019

PA(CO)
GN(13/10/2021)