

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 343 of 2009

RAJJAK SK. @ HAKIM SK. & ORS.
VS.
STATE OF WEST BENGAL & ANR.

For the Petitioners	: Mr. Soubhik Mitter, Adv., Ms. Shreyashi Biswas, Adv., Ms. Benajir Hasan, Adv.
For the Opposite Parties	: Mr. Bidyut Kr. Roy, Adv., Mr. Mirza Firoz Ahmed Begg, Adv.
Hearing concluded on	: 5 th September, 2022
Judgement on	: 8 th September, 2022

Siddhartha Roy Chowdhury, J:-

1. This case is arising out of an application filed under Section 482 of the Code of Criminal Procedure seeking order to quash the impugned charge sheet no. 260 of 2008 dated 28th September, 2008, filed against the petitioners under Section 363/366/120B/376 of the I.P.C. in connection with Suti P.S. Case No. 119 of 2008 dated 2nd June, 2008 corresponding to G.R. Case No. 493 of 2008.
2. Briefly stated, Manirujjaman son of Mojammel Hoque informed the Officer-in-charge, Suti Police Station in writing that on 31st May, 2008

at about 7.30 p.m. his minor daughter Ruksar Khatun, a student of Class-X, was abducted by the accused persons when she went out of the house to purchase exercise book with her sister. The accused persons forcefully took her into a Maruti Van, gagged her and fled away. As information disclosed, an offence cognizable in nature Suti P.S. Case No. 119 of 2008 dated 2nd June, 2008 was registered under Section 363/366/120B of the I.P.C.

3. Police took up investigation which culminated into submission of charge sheet under Section 363/366/120B/376 of the I.P.C. against four accused persons. By filing the application under consideration they are seeking quashing of the charge sheet.
4. Mr. Soubhik Mitter, Learned Advocate for the petitioners argued that the victim girl was neither abducted nor kidnapped, she had an affair with Rajjak Sk. and she left her father's house on her own and both Rajjak Sk. and Ruksar got married and have been living together as husband and wife.

It is further contended that in course of hearing bail application in CRM 1783 of 2008 Hon'ble Division Bench of this Court interacted with victim girl and granted bail to the principal accused.

This fact demonstrates that there is no ingredient of offence within the meaning of Section 363/366/120B/376 of the I.P.C.

5. It is argued by Mr. Soubhik Mitter that the girl since decided to marry Rajjak Sk. on her own, the accused persons may not be sent for trial, ends of justice would be met if the charge sheet is quashed.
6. Learned Advocate representing State however, submits that the victim girl was a minor. She was born on 15th January, 1994, while the

alleged incident took place on 30th May, 2008. Victim girl since was minor factum of marriage cannot be considered to be an ingredient to quash the charge sheet.

7. I have perused the materials available on record. From the attending facts of this case it is admitted that the victim girl was a student of Class-X. In course of investigation on 13th June, 2008 the victim girl was produced before the learned Additional Chief Judicial Magistrate for recording her statement under Section 164 of the Cr.P.C. and from the said statement it appears that the victim was 14 years 5 months old at the relevant point of time. Her statement before the learned Magistrate recorded under Section 164 of the Cr.P.C. does not support the case of the petitioners. On the contrary, it is found that the victim was taken out of the custody of her father by the accused persons on 31st May, 2008 at about 7.30 p.m. when she went with her sister to purchase exercise book. The victim disclosed the name of the four accused persons who abducted and forced her into the Maruti Van and whisked away. She was rescued by some passerby and was taken to Purbasthali Police Station wherefrom her father and other family members took her back. This statement under Section 164 of Cr.P.C. made on 13th June, 2008 is bereft of any whisper regarding alleged marriage on 1st June, 2008 as claimed by the petitioner in paragraph 5 of the petition under consideration.
8. From the certified copy of charge sheet it appears that the victim was born on 15th January, 1994 according to record of ABD Balika Vidyalay, Suti, where the girl used to study.

9. Prima facie the victim appears to be a minor on the date of incident. Therefore, factum of marriage, in my view would be of no consequence.

10. The provision of Section 482 of the Cr.P.C. is incorporated to confer inherent power to the High Court to meet with all such contingences that would appear because of inherent inadequacy in the Code of Criminal Procedure. Such inherent power can be exercised precisely for either of the three purposes:-

1. Where it amount to abuse of Process of the Court.
2. Where order of quashing would secure ends of justice.
3. Where there is any legal bar against the institution or continuance of said proceeding.

It is trite to say that inherent power should be exercised very sparingly to prevent abuse of process of any Court or to secure ends of justice.

11. It appears prima facie that the accused persons committed an offence within the meaning of Section 363/366/120B of the I.P.C. and accused Rajjak Sk. committed an offence within the meaning of Section 376 of the I.P.C. as well.

12. Hon'ble Apex Court in **R.P. KAPUR VS. THE STATE OF PUNJAB** reported in **AIR 1960 SC 866** held:-

“Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage.”

13. In my humble opinion, this is not a fit case to invoke the inherent power to quash the proceeding particularly when after investigation charge sheet has been filed and there is nothing to suggest that the proceeding is attending with malafide, with motive for wreaking vengeance on the accused persons.
14. Consequently, the petition under Section 482 of Cr.P.C. stands dismissed. Interim order if any, stands vacated.
15. Let a copy of this judgement be sent to learned A.C.J.M., Jangipur, Murshidabad for information and taking necessary action.
16. CRR 343 of 2009 is thus disposed of.
17. Urgent Photostat certified copy of this judgement, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)