

23.02.2023

CRR 44 of 2022

**Purna Chandra Mahara
-Vs-
The State of West Bengal & Anr.**

For the Petitioner: Mr. Kunal Ganguly, Adv.,
Mr. Tirupati Mukherjee, Adv.,
Ms. Sanchari Chakraborty, Adv.
For the Respondent No.2: Mr. Sujoy Sarkar, Adv.,
Mr. Rahul Chachan, Adv.,
For the State:- Mr. S.S Imam, Adv.,
Mr. S. Kundu, Adv.

In the instant revision, the petitioner has assailed an order dated 20th December, 2021 passed by the learned Chief Judicial Magistrate, Birbhum, thereby rejecting the Naraji Petition filed by the petitioner in connection with F.R.M.F No.251 of 2020 dated 31st August, 2020 arising out of Suri Police Station Case No.135 of 2020 dated 22nd April, 2020 under Sections 363/365 of the Indian Penal Code. Petitioner is the defacto complainant of abovementioned FIR Case No.135 of 2020 dated 22nd April, 2020.

It is alleged by the petitioner in his written complaint that his marriage was solemnized with one Sangita Mahara on 9th February, 2001 in accordance with Hindu Rites and Customs. After marriage they were residing together in the parental home of the petitioner happily and in the said wedlock the wife of the petitioner gave birth to two children who were aged about 16 years and 14 years respectively. At the time of filing of the revisional application all of a sudden the wife of the petitioner was found missing on and from 2nd March, 2020. He lodged a missing diary with Suri Police Station on 3rd March, 2020. On 5th March, 2020 the wife of the petitioner returned to her matrimonial home and disclosed

that she had developed an illicit relationship with opposite party No.2 who happens to be the teacher of her son. On 6th March, 2020 the wife of the petitioner executed the settlement paper in presence of her parents and brother and undertook that similar incident would not happen again in future and she also admitted in writing that she had developed an illicit relationship with opposite party No.2. The petitioner out of love and generosity allowed his wife to stay in his residence. However on 16th April, 2020 the opposite party No.2 again eloped her with ill motive from the residence of the petitioner. The petitioner lodged a complaint in the jurisdictional police station on 22nd April, 2020 on the basis of which FIR Case No.135 of 2020 was registered against the opposite party No.2 under Sections 363/365 of the IPC. It is alleged by the petitioner that the investigating officer failed and neglected to investigate into the case properly. The minor children of the petitioner who were present in the house when the wife of the petitioner was eloped were not examined by the investigating officer. Finally on 31st August, 2020 the investigating officer submitted final report on misstatement of fact before the learned Chief Judicial Magistrate, Birbhum. The petitioner filed a Naraji Petition against the said final report and prayed for further investigation under Section 173(8) of the Cr.P.C. However the learned Chief Judicial Magistrate, Birbhum vide order dated 20th December, 2021 rejected the said Naraji Petition and directed the Naraji Petition to be treated as a complaint case after hearing learned Counsel appearing on behalf of the petitioner. Learned Chief Judicial Magistrate, Birbhum held as under:

“In my considered view, no offence under Section 363/365 IPC has been made out against accused Karna Kahar but so far as the allegation of theft of cash and gold ornaments is concerned, I am of the view that

the same needs to be adjudicated by court of law but not by way of further investigation and it would be sufficient if the Naraji petition is treated as a complaint and the case is henceforth treated as a complaint case”

By filing supplementary affidavit, the petitioner has annexed the copies of Naraji Petition dated 6th December, 2021 and 9th December, 2021.

I have heard submissions made by the learned Advocates for the petitioner, opposite party and the State of West Bengal.

Indisputably FIR case No.135 of 2020 was registered by the police under Sections 363/365 of the IPC. It is also not disputed that the wife of the petitioner on the date of incident was not a minor therefore Section 363 which prescribes punishment for kidnapping would not attract under the facts and circumstances of the case. If the contents of the written complaint is believed to be true this would at best be a case of abduction within the meaning of Section of 362 of the IPC. Section 362 defines “Abduction” in the following words:

“Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.”

Section 365 is penal provision for kidnapping or abducting with intent secretly and wrongfully to confined person. It is needless to say that abduction simpliciter is not an offence under the IPC. Only when a person is compelled by force by another to go from a place or if the person is induced by deceitful means to go from any place, the act of abduction becomes an offence. The charge of abduction must fail unless the purpose of abduction as required under Section 365 or under Section 366 is proved.

The case of petitioner is that he used to stay away from his home on account of his service. In his absence

his wife developed an illicit relation with opposite party No.2 who was private tutor of her children. The opposite party No.2 induced her by deceitful means to go away from her matrimonial home and wrongfully confined her in some secret place.

It is found from the record that during investigation the wife of the petitioner made a statement before the investigating officer and stated that as a result of matrimonial discord she went away from her matrimonial home and stayed in the house of her aunt. The learned Chief Judicial Magistrate on careful consideration of the case diary accepted the final report.

In the Naraji Petition it is alleged by the petitioner that the investigating officer made a perfunctory investigation and did not even record the statement of the minor children of the petitioner. They were the best witnesses to state as to whether the allegation made against the accused/opposite party No.2 was correct or not.

I have already found that there is absolute no evidence of abduction of the wife of the petitioner by the opposite party No.2, the wife of the petitioner herself stated that she was staying at her aunt's house voluntarily leaving her matrimonial home. Thus, learned Magistrate was absolutely justified in accepting the final report submitted by the investigation officer.

I do not find any reason of interference against the impugned order.

Accordingly the instant revision being devoid of any merit is dismissed on contest.

The order passed by the learned Chief Judicial Magistrate on 20th December, 2021 in Suri Police Station Case No.135 of 2020 is affirmed.

(Bibek Chaudhuri, J.)