

A KAVITA CHANDRAKANT LAKHANI

v.

STATE OF MAHARASHTRA & ANR.

(Criminal Appeal No. 459 of 2016)

B APRIL 24, 2018

[A. K. SIKRI AND R. K. AGRAWAL, JJ.]

C *Penal Code, 1860 – s.366 – Framing of charge under – When not justified – FIR registered by appellant against Respondent no.2, with whom she was in relationship earlier – Appellant stated that on the fateful night when she and Respondent no.2 were in a party, after the party finished, Respondent no.2 on the pretext of dropping her to the venue for dinner, drove her to his home and when on reaching there appellant refused to come out of the car, Respondent*
D *no.2 forcibly lifted her up, took her to his house and started beating her – Later, appellant gave further statement that she was also molested by Respondent no.2 – Charge sheet filed – Respondent no.2 discharged inter alia in respect of offence u/s.366 – On appeal, held: For charge u/s.366, mere finding that a woman was abducted is not enough –It must further be proved that the accused abducted*
E *the woman with the intent that she may be compelled to marry any person or in order that she may be forced or seduced to illicit intercourse– In the instant case, primary allegations made by appellant were that Respondent No. 2 forcibly took her to his house, first expressed his love for her and then started beating her which*
F *fact is evident on record – However, one week thereafter appellant made out a case of molestation stating that it was not stated earlier due to embarrassment – This does not inspire confidence as the FIR was lodged by appellant, five days after the incident, with due deliberation, and why within one week she thought of mentioning about molestation and did not feel embarrassed then – Even if it is*
G *proved that Respondent No. 2 forcibly took her to his house, the later version that his intention was to marry her or to force or seduce her to illicit intercourse was clearly an afterthought – Charge u/ s.366 against respondent no.2 is not maintainable.*

H

Dismissing the appeal, the Court

A

HELD: 1.1 In order to constitute the offence of ‘abduction’ a person must be carried off illegally by force or deception, that is, to compel a person by force or deceitful means to induce to go from one place to another. The intention of the accused is the basis and the gravamen of an offence under this Section. The volition, the intention and the conduct of the accused determine the offence, and the intent of the accused is the vital question for determination in each case. Once the necessary intent of the accused is established, the offence is complete, whether or not the accused succeeded in effecting his purpose, and whether or not the woman consented to the marriage or the illicit intercourse. Apart from this, to constitute an offence under Section 366 IPC, it is necessary for the prosecution to prove that the accused induced the complainant woman or compelled by force to go from any place, that such inducement was by deceitful means. So far as charge under Section 366 IPC is concerned, mere finding that a woman was abducted is not enough, it must further be proved that the accused abducted the woman with the intent that she may be compelled, or knowing it to be likely that she will be compelled to marry any person or in order that she may be forced or seduced to illicit intercourse or knowing it to be likely that she will be forced or seduced to illicit intercourse. Unless the prosecution proves that the abduction is for the purposes mentioned in Section 366 IPC, the Court cannot hold the accused guilty and punish him under Section 366 IPC.[Paras 10-12][1000-E-H; 1001-A-B]

B

C

D

E

1.2 One week after the FIR was got registered under various Sections of the IPC, a further statement was given by the appellant, after explaining the facts to her mother wherein the appellant made out a case of being molested. Her explanation that it was not stated earlier due to embarrassment does not inspire confidence as FIR was lodged five days after the incident and, therefore, she lodged the same with due deliberation. Again, why within one week thereafter she thought of mentioning about the molestation and did not feel embarrassed now? There is no explanation for that. The act of pulling out the appellant from the car of Respondent No. 2 was witnessed by the watchman. In this

F

G

H

- A view of the matter, it is apparently clear that the allegation was confined to aspect of Respondent No. 2 forcibly taking her to his house. However, the allegations of removing her clothes and touching her inappropriately or molestation was added afterwards. It is evident on record that Respondent No. 2 and the appellant were in a relationship which was known to their families also.
- B The primary allegations were that Respondent No. 2 took her forcibly to his house. But it was not with intent to seduce her to illicit intercourse. Actually, as per the prosecutrix, Respondent No. 2 first expressed his love for her and afterwards he started beating her with waist belt and using his hands which fact is
- C evident on record. The statement of being molested at the hands of Respondent No. 2 was not given at once and was given later. The very same acts of Respondent No. 2 do not show his intent to abduct her in order to marry her against her will or to force her or seduce her to illicit intercourse. Even if it is proved that
- D Respondent No. 2 forcibly took her to his house, but the later version that his intention was to marry her or to force or seduce her to illicit intercourse is clearly an afterthought. At the highest, the case can be put that both of them were in a relationship and due to sudden outbreak of emotions or due to sense of insecurity on the part of Respondent No. 2, the above act was done. [Paras
- E 13, 14][1001-G-H; 1002-A, C, E-F]

Cref Finance Ltd. v. Shree Shanthi Homes (P) Ltd. and Another (2005) 7 SCC 467: [2005] 2 Suppl. SCR 873; Dharam Pal and Others v. State of Haryana and Another (2014) 3 SCC 306 – held inapplicable.

- F **Case Law Reference**
- | | | |
|-------------------------|-------------------|--------|
| [2005] 2 Suppl. SCR 873 | held inapplicable | Para 7 |
| (2014) 3 SCC 306 | held inapplicable | Para 9 |

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 459 of 2016.

- G From the Judgment and Order dated 06.05.2013 of the High Court of Judicature at Bombay in Criminal Writ Petition No. 3766 of 2012.

Siddharth Luthra, Sr. Adv., Robin Jaisinghani, Vikas Mehta, Vijay Gandhi, Samir Chaudhary, Ms. Purnima Raj, Ms. Anushree Menon, Advs. for the Appellant.

H

Mahesh Jethmalani, Sr. Adv., Nishant R. Katneshwarkar, Anand, A
Rahul M, Ms. R. N. Reddy, Dr. Sushil Balwada, Advs. for the
Respondents.

The Judgment of the Court was delivered by

R. K. AGRAWAL, J. 1. This appeal is directed against the B
judgment and order dated 06.05.2013 passed by learned single Judge of
the High Court of Judicature at Bombay in Criminal Writ Petition No.
3766 of 2012 whereby the High Court dismissed the petition filed by
Kavita Chandrakant Lakhani-the appellant herein against the order dated
04.07.2007 passed by learned Judge, Sessions Court at Greater Bombay C
in Criminal Revision Appln. No. 1261 of 2007 filed by Respondent No. 2
herein against the committal order dated 03.10.2006 passed by the
Additional Chief Metropolitan Magistrate, 40th Court, Gurgaum, Mumbai
in C.C. No. 215/PW/2005 wherein learned Additional Chief Metropolitan
Magistrate rejected the application filed by Respondent No. 2 herein for
discharge under Section 363 of the Indian Penal Code, 1860 (in short D
'the IPC'). It may be mentioned here that learned Judge, Sessions Court,
vide order dated 04.07.2007 had discharged the Respondent No. 2 not
only in respect of offence under Section 366 of the IPC but also under
Sections 363 and 506 (ii) of the IPC.

2. Brief facts:

(a) A First Information Report (FIR) bearing No. 247 of 2003 PS E
Gamdevi, District Mumbai dated 12.09.2003 was got registered by the
appellant herein against Respondent No. 2 herein stating that on the
fateful night of 06.09.2003, Respondent No. 2 and the appellant were in
a birthday party along with their friends. After finishing the party, F
Respondent No. 2, on the pretext of dropping the appellant to the venue
for dinner, with whom she was in relationship earlier, drove her to his
home in Cuffe Parade, Mumbai. After reaching there, when the appellant
refused to come out of the car, Respondent No. 2 forcibly lifted her up
and took her to his house and put her on bed. Respondent No. 2 removed
all her clothes and starting beating her using his waist belt and touching G
her inappropriately on her private parts in order to outrage her modesty.

(b) A charge sheet in the case was filed on 30.03.2004 before the
Court of Additional Chief Metropolitan Magistrate, 40th Court, Girgaon,
Mumbai under Sections 363, 342, 324, 354, 323 and 506 (Part II) of the

A IPC. A Discharge Application was preferred by the Respondent No. 2 stating that no offence is made out under Section 363 of the IPC. Learned ACMM, vide order dated 03.10.2006, rejected the discharge application and committed the case to the Court of Sessions which got registered as Sessions Case No. 858 of 2006.

B (c) Being aggrieved by the order dated 03.10.2006, Respondent No. 2 preferred a Revision Application being No. 1261 of 2006 before the Court of Sessions. Respondent No. 2 also filed a Misc. Appln. being No. 244 of 2007 in Sessions Case No. 858 of 2006 for discharge under Section 366 of the IPC and for remanding the matter back to the lower Court. Learned Asst. Sessions Judge, Greater Mumbai, by order dated
C 10.04.2007, rejected the Misc. Application being No. 244 of 2007 filed by the Respondent No. 2.

(d) Aggrieved by the order dated 03.10.2006 and 10.04.2007, Respondent No. 2 preferred a Criminal Application being No. 1340 of 2007 before the High Court. On 25.04.2007, when the said application
D came up for hearing before a learned single Judge of the High Court, Respondent No. 2 withdrew the same with a request that the trial of the case should not be proceeded with till the disposal of the Revision Application before the Sessions Court. Learned single Judge of the High Court, vide order dated 25.04.2007, stayed the proceedings till the
E disposal of the said revision application.

(e) Vide order dated 04.07.2007, learned Additional Sessions Judge, set aside the order dated 03.10.2006 while allowing the revision application filed by Respondent No. 2. The learned Judge discharged Respondent No. 2 not only in respect of offence under Section 366 of the IPC but
F also under Sections 363 and 506(ii) of the IPC. On 13.06.2012, charges were framed against Respondent No. 2 under Sections 342, 324, 323 and 354 of the IPC. Aggrieved by the order dated 04.07.2007, the appellant preferred a Criminal Writ Petition being No. 3766 of 2012 before the High Court. Learned single Judge of the High Court, vide
G order dated 06.05.2013, dismissed the writ petition filed by the appellant.

(f) Aggrieved by the judgment dated 06.05.2013, the appellant has preferred this appeal before this Court.

3. Heard Mr. Siddharth Luthra, learned senior counsel for the Appellant and Mr. Mahesh Jethmalani, learned senior counsel for

H

Respondent No. 2 and Mr. Nishant R. Katneshwarkar, learned counsel A
for the respondent-State.

Point(s) for consideration:-

4. The only point for consideration before this Court is whether in B
the present facts and circumstances of the case, the appellant has made
out a case for inclusion of Section 366 of the IPC in the charges framed
or not?

5. We have heard the arguments advanced by both the sides and
perused the records.

Rival contentions:-

6. Learned senior counsel for the appellant contended that the C
incident took place on 06/07.09.2003 and FIR got registered on 12.09.2003
on the complaint made by the appellant. Further, the appellant gave a
supplementary statement on 16.02.2004 and if the complaint and the
supplementary statement is taken in its true perspective, no case has D
been made out for the discharge of Respondent No. 2 in respect of the
alleged offences under Sections 366, 363 and 506(ii) of the IPC.

7. In support of his contention, learned senior counsel for the E
appellant has relied upon *Cref Finance Ltd. vs. Shree Shanthy Homes
(P) Ltd. and Another* (2005) 7 SCC 467. He, therefore, contended that
the impugned order as also the order of the Sessions Court discharging
Respondent No. 2 be set aside by this Court.

8. Learned senior counsel for Respondent No. 2, however, F
submitted that there is no whisper in the complaint on the basis of which
FIR was registered on 12.09.2003 regarding commission of offences
under Sections 366, 363 and 506(ii) of the IPC and the supplementary
statement given by the appellant after about 5 (five) months is only an
afterthought just to implicate Respondent No. 2 under other Sections
also and, therefore, it cannot be relied upon.

9. Learned senior counsel for Respondent No. 2 referred to a G
decision of this Court in *Dharam Pal and Others vs. State of Haryana
and Another* (2014) 3 SCC 306 and submitted that the order passed by
the High Court and the Sessions Court not call for any interference.

A **Discussion:-**

10. In the above backdrop, it is pertinent to mention here the ingredients of Section 366 of the IPC which are as under:-

B **“366 “Kidnapping, abducting or inducing woman to compel her marriage, etc.—**Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable as aforesaid.”

C In order to constitute the offence of ‘abduction’ a person must be carried off illegally by force or deception, that is, to compel a person by force or deceitful means to induce to go from one place to another. The intention of the accused is the basis and the gravamen of an offence under this Section. The volition, the intention and the conduct of the accused determine the offence; they can only bear upon the intent with which the accused kidnapped or abducted the woman, and the intent of the accused is the vital question for determination in each case. Once the necessary intent of the accused is established, the offence is complete, whether or not the accused succeeded in effecting his purpose, and whether or not the woman consented to the marriage or the illicit intercourse.

F 11. Apart from this, to constitute an offence under Section 366 IPC, it is necessary for the prosecution to prove that the accused induced the complainant woman or compelled by force to go from any place, that such inducement was by deceitful means, that such abduction took place with the intent that the complainant may be seduced to illicit intercourse and/or that the accused knew it to be likely that the complainant may be seduced to illicit intercourse as a result of her abduction. Mere abduction does not bring an accused under the ambit of

H

this penal section. So far as charge under Section 366 IPC is concerned, mere finding that a woman was abducted is not enough, it must further be proved that the accused abducted the woman with the intent that she may be compelled, or knowing it to be likely that she will be compelled to marry any person or in order that she may be forced or seduced to illicit intercourse or knowing it to be likely that she will be forced or seduced to illicit intercourse. Unless the prosecution proves that the abduction is for the purposes mentioned in Section 366 IPC, the Court cannot hold the accused guilty and punish him under Section 366 IPC.

12. We are of the considered opinion that the essence of all the applications and orders filed before the courts below is same. There is no point in considering that in all the courts below, the other applications filed by Respondent No. 2 were not brought to the notice of the court at this stage. In this view of the matter, it would be appropriate if we would confine our discussion to the applicability of Section 366 of the IPC in the present facts and circumstances of the case.

13. In the case at hand, the appellant herein and Respondent No. 2 were in a relationship. On 06.09.2003, the appellant herein and Respondent No. 2 attended a birthday party of one of their friends. As per the allegations in the complaint, in the early hours of 07.09.2003, when all the friends proceeded towards the venue for dinner, Respondent No. 2 herein, in order to drop her to the venue, took her to his house at Cuffe Parade, Mumbai and asked her to get down from the car. When she refused for the same, Respondent No. 2 forcibly pulled her out of the car and lifted her up and took her to his house and put her on his bed. After this, Respondent No. 2 herein started saying "I love you and why are you not marrying me" and started beating her with his hands and belt. He also hit her head across the wall. As a result, she sustained injuries on her person. At around 2 a.m., when the father of Respondent No. 2 returned home, he took the appellant herein to her home. On 12.09.2003, FIR was got registered under various Sections of the IPC. One week thereafter, i.e. on 19.09.2003, a further statement was given by the appellant, after explaining the facts to her mother wherein the appellant has made out a case of being molested. Her explanation that it was not stated earlier due to embarrassment does not inspire confidence as FIR was lodged five days' after the incident and, therefore, she lodged the same with due deliberation. Again, why within one week thereafter she thought of mentioning about the molestation and did not feel

A
B
C
D
E
F
G
H

- A embarrassed now? There is no explanation for that. The act of pulling out the appellant herein from the car of Respondent No. 2 was witnessed by the watchman. In this view of the matter, it is apparently clear that the allegation is confined to aspect of Respondent No. 2 herein forcibly taking her to his house. However, the allegations of removing her clothes and touching her inappropriately or molestation was added afterwards.
- B This Court has time and again held that mere abduction does not bring an accused under the ambit of Section 366 IPC. It must be proved that the accused abducted the woman with the intent that she may be compelled, or knowing it to be likely that she will be compelled to marry any person or in order that she may be forced or seduced to illicit
- C intercourse or knowing it to be likely that she will be forced or seduced to illicit intercourse. It is evident on record that Respondent No. 2 and the appellant herein were in a relationship which was known to their families also. The primary allegations are that Respondent No. 2 took her forcibly to his house. But it was not with intent to seduce her to illicit
- D intercourse. Actually, as per the prosecutrix, Respondent No. 2 first expressed his love for her and afterwards he started beating her with waist belt and using his hands which fact is evident on record. The statement of being molested at the hands of Respondent No. 2 was not given at once and was given later. The very same acts of Respondent No. 2 do not show his intent to abduct her in order to marry her against
- E her will or to force her or seduce her to illicit intercourse.

14. Even if it is proved that Respondent No. 2 forcibly took her to his house, but the later version that his intention was to marry her or to force or seduce her to illicit intercourse is clearly an afterthought. At the highest, the case can be put that both of them were in a relationship and due to sudden outbreak of emotions or due to sense of insecurity on the

F part of Respondent No. 2, the above act was done. Further, the decisions relied upon by learned senior counsel for the parties have no application to the facts of the present case.

15. In view of the foregoing discussion, we are of the opinion that the charge under Section 366 of the IPC is not maintainable and the

G High Court was right in upholding so. We are in agreement with the order passed by the High Court. However, since the matter is pending since 2003 and is still at the stage of charge framing, we deem it appropriate to direct the trial Court to conclude the trial within 6 (months) from the date of passing of this judgment. It is also made clear that the

H

KAVITA CHANDRAKANT LAKHANI v. STATE OF
MAHARASHTRA [R. K. AGRAWAL, J.]

1003

observations recorded in this judgment are for the purpose of applicability of Section 366 of the IPC only and trial Court shall decide the matter on merits. The appeal is dismissed. A

Divya Pandey

Appeal dismissed.