

THE HIGH COURT OF MADHYA PRADESH

CRR-2933-2017

(ANIL KUMAR SONI Vs THE STATE OF MADHYA PRADESH)

Jabalpur, Dated : 30-11-2017

Shri Siddharth Datt, learned counsel for the applicant.

Shri Devendra Shukla, learned Panel Lawyer for the respondent/State.

The present petition has been filed by the petitioner being aggrieved by the order dated 4/10/2017 passed by the learned Chief Judicial Magistrate, Chhatarpur in Criminal Case No. 392/17 (State Vs. Anil Kumar) whereby the charges were framed against the applicant under Section 342, 504 and 506 (1st category) of I.P.C.

2. Brief facts essential for determination of this case are as follows :- On 19/04/2017 at about 3 P.M. the deceased Chand Babu aged 12 years was at the shop called Rizwan Collection from 3 P.M. till 8:30 P.M. Thereafter he is stated to have left for his home but did not reach there. His parents and relations searched for him and, thereafter, registered a missing report on 20/04/2017 under Section 363 of I.P.C. The body of the missing child was recovered from the pond on 21/04/2017. The post-mortem report annexed to the petition from page no.

44 to page no. 49 reveals the cause of death as 'Asphyxia' due to drowning. F.I.R being Crime No. 177/2017 is registered at Police Station, Chhatarpur. The police concluded investigation and filed charge sheet against the petitioner under Section 363 and 305 of I.P.C.

3. Investigation revealed that on 19/04/2017, the petitioner went to Rizwan collection and took the deceased Chand Babu with him to the father of the deceased in order to complain to the father of the deceased that the deceased, aged 12 years, has written a love letter to his daughter. A short distance from the shop, the petitioner and the deceased were met by Naeem Khan, the maternal uncle of the deceased, who asked the petitioner where he was taking the deceased. To this, the petitioner told Naeem Khan that he was taking the child to his father to complain to him about the action of sending a love letter to the daughter of the petitioner by the deceased. At this, the Naeem Khan told the petitioner that the father of the deceased is not at home and that he would send the elder brother of the deceased named Nisar Khan to the petitioner and the petitioner can tell Nisar Khan about the action of the deceased. Upon this, the petitioner handed over the deceased Chand Babu to witness Naeem Khan who took the child back

to the shop Rizwan collection and left him there.

4. After a while Nisar Khan, the elder brother of the deceased went to the house of the petitioner and asked him what the matter was. The petitioner told the witness Nisar Khan that the deceased is a child and children can make the mistakes and told him to ensure that the same is not repeated. While Nisar Khan was leaving, the petitioner is alleged to have threatened the deceased with dire consequences in the event he repeats his act. It is relevant to mention here that the deceased did not accompany Nisar Khan to the house of the petitioner. Thereafter, the evidence disclosed by the investigation is to the effect that the maternal uncle Naeem Khan and the brother Nisar Khan are said to have advised the deceased against repeating his action. After advising the deceased, both these witnesses went away from Rizwan collection.

5. Thereafter, witness Rizwan's statement u/s. 161 Cr.P.C reveals that the deceased sat at the shop of Rizwan till 8:30 P.M on 19/04/2017 after which the deceased left for his home. Rizwan closed his shop at 10:30 P.M. Jishan Khan occupies the shop adjacent to the shop of Rizwan. He has stated in his

statement u/s. 161 Cr.P.C that on 19/04/2017, the petitioner came to the shop "Rizwan Collection" where the deceased was sitting and scolded and threatened the deceased and took the deceased with him from the shop to meet his father. This witness also states that the child was brought back to the shop "Rizwan Collection" by Naeem Khan.

6. The above stated is the undisputed narration of facts which is disclosed from the 161 statement of Naeem Khan the maternal uncle of the deceased, Nisar Khan the brother of the deceased, Rizwan Khan who is the owner of the shop "Rizwan Collection" where the deceased was last seen and the statement of Jishan Khan, who is the shop-keeper occupying the shop adjacent to Rizwan collection. The statement of the other witnesses, including the father of the deceased and others are hearsay.

7. As the offence under Section 305 is exclusively triable by the Court of Sessions, the case was committed to the Court of Session for trial. At the stage of arguments on framing charges, it was argued that the offence under Section 342 is not made out as from the evidence of eye-witnesses does not

reveal that the petitioner has confined the deceased. On the contrary, the evidence of the eye-witnesses show that the deceased was sitting at the shop Rizwan collection from 3 P.M. to 8:30 P.M. on 19/04/2017. As regards, Section 305, it was argued that an offence of abetment of suicide by a minor is not made out as there was no *prima facie* evidence to against the petitioner which could constitute abetment under Section 107 of I.P.C. It was also argued that the offence under Section 363 was not made out as there was no kidnapping by the petitioner as it is the admitted position of the prosecution, as revealed by the statement of the witnesses, that the petitioner was taking the deceased to his father and not away from him and so the said act attributed to the Petitioner cannot be termed as kidnapping. However, the statement of Naeem Khan also reveals that he intercepted the petitioner and the deceased and had taken the child into his custody and thereafter, taken the child back to the shop â Rizwan Collectionâ and left him there. Under the circumstances, the learned Court of Sessions discharged the applicant of offences under Section 363 and 305 of I.P.C but however held that offences under Section 342, 504 and 506 (1st category) of I.P.C. are made out against the petitioner. It is aggrieved by

the last portion of the impugned order that the petitioner has preferred the instant petition.

8. Heard the learned counsel for the petitioner and the State and perused the documents filed along with the petition. Learned counsel for the State while opposing the petition has submitted that the order has correctly been passed looking into the prima facie evidence against the petitioner on the basis of the witness statements. He submits that there is no case to interfere with the impugned order and that the petitioners are liable to be tried for the the offences for which charges have been framed.

9. Learned counsel for the petitioner has submitted to the contrary and argued that the said offences are not made out. In support of his contention, he has drawn the attention of this Court to Section 342 IPC which provides for punishment in a case of wrongful confinement. He argued that before an act can be punishable under Section 342 I.P.C, the act must satisfy the prerequisites of Section 340 IPC which lays down the substantive offence of wrongful confinement. The offence of wrongful confinement is committed only with a person is restrained in a manner, so as to prevent that person from

proceeding beyond certain physical boundaries. The undisputed act which is sought to be brought under this definition is the act of the petitioner of taking the deceased from "Rizwan Collection" towards the house of the deceased, in order to meet the father of the deceased. The said act cannot be seen as an act confining a person within any circumscribed limits so as to have prevented the deceased from proceeding beyond a limit. Besides, it is also the undisputed case of the prosecution that the petitioner and the child were intercepted half way by the maternal uncle of the deceased i.e. Naeem Khan, who informed the petitioner that the father of the deceased is not at the residence, upon which the petitioner handed over the child to the witness Naeem Khan who took the child right back to "Rizwan Collection" and left him there. Thus, from the statements of witness Naeem, Rizwan and Jishan, it is clear that the petitioner did not confine the deceased in any manner, therefore, the offence under Section 342 IPC is not made out.

10. As regards, the offence under Section 504 I.P.C is concerned, the same relates to intentional insult with intend to provoke breach of peace. There are two ingredients which must be satisfied before the said offence can be said to have been

committed. The first ingredient is that there must be an intentional insult given by the accused to another and, secondly, the person guilty of such intentional insult must also intend or at least bear the knowledge that such insult is likely to result in breach of peace.

11. In this case, the facts do not disclose the commission of an offence under Section 504 as none of the witnesses have stated that they were provoked to the point of causing breach of peace on account of the scolding given by the petitioner to the deceased. Therefore, the offence under Section 504 I.P.C is also not made out against the petitioner.

12. However, as regards the offence under Section 506 of I.P.C, the 161 statement of Nisar Khan and Jishan Khan go to disclose that the petitioner had threatened the deceased of dire consequences if the deceased repeated this act. Therefore, the charge framed under Section 506 of I.P.C. cannot be faulted.

13. Under the circumstances, on the basis of the discussion hereinabove and the material on record, the charges under Section 342 and 504 have not been made out by the evidence on record and are quashed and the petitioner is discharged of

them. The charge framed under Section 506 however is sustained, the same being proper in the facts and circumstances of the case.

14. Accordingly, this petition is partly allowed in the aforesaid terms and is finally disposed of.

(ATUL SREEDHARAN)
JUDGE

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VAIBHAV
YEOLEKAR

Digitally signed by VAIBHAV YEOLEKAR
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