Special (POCSO) Case No. 26/2018

17.12.2018.

The sole accused Ikramul Hussain is present along with his learned defence counsel.

The instant case has arisen out of an ejahar dated 30.05.2017, lodged at Moirabari Police Station, which was registered as Moirabari P.S. Case No. 223/17 u/s 363(A) IPC. After completion of investigation, charge-sheet was submitted against the accused u/s 363(A) IPC r/w Section 6 of POCSO Act, 2012. Subsequently, after completion of procedure u/s 207 Cr.PC, the case has reached the stage of framing of charge.

Heard learned P.P. Mr. A. Kalam and the defence counsel Mr. P. R. Bora on the point of charge. Perused the relevant materials on record including the ejahar and the statements of the alleged victim girl recorded u/s 164/161 Cr. P.C. In both these statements, the age of the victim girl is indicated as 15 years and in neither of the statements there is any whisper by the alleged victim about any kind of sexual assault upon her pertaining to the concerned incident.

In her Section 164 Cr.PC statement, the alleged victim girl has stated that one day in the month of Ramjan, she went to Guwahati alone from Morigaon and stayed there for one week and thereafter, returned home. Further, she has stated in her Section 161 Cr.PC statement that she was having love affairs with the accused and one day she eloped with him, and thereafter, stayed in Guwahati in the house of a relative. She has further stated in her statement recorded by the police that she did not have '*Nikah'*.

Though, the consent of a minor is not a valid consent in the eyes of law but for prima-facie making out an offence of kidnapping some elements of inducement/taking away on the part of the accused has to be present in order to justify prosecuting him (the accused). In the present case, in view of the aforesaid materials narrated/discussed above, such elements are found to be missing to constitute such an offence of kidnapping of the minor.

In the entire given facts and circumstances and in view of the above discussion, I come to the considered view that the materials on record available at this stage, including the crucial statements of the alleged victim U/s 161/164 Cr.PC as discussed above, do not justify framing of charges against the accused for offence u/s 363/363(A) IPC, read with Section 6 of POCSO Act, 2012 or any other penal provisions.

Accordingly, the accused deserves to be discharged and consequently, he is discharged.

The instant case stands disposed of on the aforesaid terms.

Special Judge Morigaon, Assam