

Mohd Iqbal vs State And Ors. on 11 August, 2017

Author: Sanjay Kumar Gupta

Bench: Sanjay Kumar Gupta

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

561-A Cr.P.C. No. 61/2017 & MP No. 01/2017

Date of decision: 11.08.2017

Mohd. Iqbal

V.

State of J&K & ors.

Coram:

Hon'ble Mr. Justice Sanjay Kumar Gupta

Appearing Counsel:

For the petitioner(s) : Mr. Sachin Dogra, Advocate.

For the respondent(s) : Mr. A.S.Kotwal, Dy.A.G.

None for private respondents.

i. Whether approved for reporting in Press/Media : Yes/No/Optional ii. Whether to be reported in Digest/Journal : Yes/No

1. Despite several opportunities granted to the State respondents for filing objections, they have not chosen to file the same.

2. Petitioner has filed the instant petition under Section 561-A of the Code of Criminal Procedure seeking quashment of orders dated 18.10.2016, 24.10.2016, 06.08.2016 and 01.12.2016 passed by the learned Principal Sessions Judge, Poonch by virtue of which private respondents have been enlarged on bail in FIR No. 87/2015 registered for offences under Sections 376, 363, 326, 343, 109 and 506 RPC and the application of the petitioner seeking custody of minor girl/prosecutrix has been denied in File No. 03/Challan in case titled "State v. Mohd. Safeer & ors." by the learned trial court.

3. The brief facts of the case are that petitioner is father of Akhter Jan (non-appellant No.5/respondent No.5 in CDLOW No. 20/2015), who is a minor daughter and under the influence of respondent No.4 (Mohd. Safeer) and his family, has been alleged to have solemnised marriage with him and have sought protection from this Hon'ble Court vide judgment dated 25.06.2015 in OWP No. 890/2015, which was challenged by the petitioner's son in CDLOW No. 20/2015, which

was disposed of by the Hon'ble Division Bench vide its judgment dated 15.09.2015 with a direction to the agency to verify whether the petitioner's daughter and respondent No.4 were of the age of majority and competent to contract marriage. The date of birth certificate of the petitioner's daughter is enclosed as Annexure-A to this petition. It is further submitted that subsequent to the directions of the Hon'ble Division Bench the petitioners minor daughter was recovered on 07.04.2016 and her statement under Section 164-A Cr.P.C was recorded before the Magistrate, subsequent to which the accused/private respondents were arrested and booked under various sections of the Penal Code in which a challan was presented before the trial Court on 23.06.2016. It is submitted that 22 witnesses were recorded in the challan filed by the agency, before the trial court.

It is further submitted that the learned trial court after filing of the charge sheet, charged the accused persons on the basis of the statement recorded in the case, in which the prosecution on the very first date produced the prosecutrix, who deviated from her earlier statement as recorded under Section 164-A Cr.P.C and on the basis of this the private respondents have been bailed out.

The petitioner crave indulgence of this court for setting aside the impugned orders inter alia on the grounds that the learned trial court exceeded its jurisdiction, by ignoring the special provision inserted in Sections 497-C and 497-D of the Cr.P.C by way of amendment, since the orders impugned does not fall within any of the provisions of the said sections of the Criminal procedure Code. It is further submitted that the prosecution story when read collectively with the FIR and the initial statements recorded under Sections 164-A and 161 of Cr.P.C clearly demonstrates that offences are made out against the accused persons and the investigation done by the police itself shows that the genesis of the occurrence and its case was thus rightly accepted by charge-sheeting the accused persons by the trial court. It is submitted that the evidence so recorded and as recorded by the police is sterling and do depict the true facts and a prima facie case for the offences as mentioned in the challan. It is submitted that the learned trial court has not properly appreciated the evidence with a view to find out whether a prima facie case is made out for the offence and without appreciating the same and in violation of the statutory provision and directions of the Hon'ble Division Bench has bailed out the accused persons, which has resulted in failure of justice. It is further submitted that the impugned orders are against law and facts of the case and are liable to be quashed and set aside.

4. Heard learned counsel for the petitioner and the learned Deputy Advocate General appearing for the State.

5. Perusal of this petition, it is evident that petitioner has sought the quashment of four orders, one is order dated 06.08.2016, second is order dated 18.10.2016, third is order dated 24.10.2016 and fourth is order dated 01.12.2016 passed in same FIR no. 87/2015 u/s 376 /363/326 and 343 RPC.

6. Vide order dated 6.8.2016, two accused- mother of Mohd. Safir and her daughter, who were involved in offences u/s 363/109 RPC have been enlarged on bail during investigation as Court did not find sufficient evidence against them.

7. Vide order 18.10.2016, Court below decided two petitions one filed by prosecutrix for protection for going to matrimonial house, which was allowed, and another petition was filed by father of prosecutrix for giving custody of prosecutrix, which was dismissed.

8. Vide order dated 24.10.2016 main accused Mohd.

Safeer was granted bail as prosecutrix stated before court during trial that she has married with this accused.

9. Vide order dated 01.12.2016 Court below has granted bail to one Parvez Ahmed who was proceeded u/s 512 Cr.P.C and thereafter surrendered before court, on the ground that there was no sufficient evidence against him as prosecutrix turned hostile.

10. Brief facts of the case are that on 20.06.2015 one Parvez Ahmed S/o Lal Din caste Gujjar R/o Jhullas, Tehsil Haveil, lodged a missing report of his sister-in-law, the Prosecutrix D/o Mohd. Iqbal in police post Jhullass. In the report, it has been stated that Prosecutrix had come to his home to meet his sister. In the intervening night of 18/19.06.2015, she had gone for toilet at 3 a.m. and did not turn back. This report was entered vide Report No.07 in Daily Diary dated 20.06.2015. Police accordingly started search of prosecutrix. The wireless message was given to Police Station and information was also given to higher officer. Thereafter on 30.06.2015, one Mohd. Shafi lodged a written complaint against Mohd. Safir & Mohd. Shaqoor Sons of Mohd. Rafiq, Mohd. Rafiq S/o Firoz Din, Mohd. Tariq, Mohd. Farid son of Faiz Hussain, in the police post Jhullas stating that he has come to know that his sister prosecutrix aged 16-17 years, who had gone missing on 18.06.2015, from the house of her brother in law (Jijja), now it has come to the knowledge that these persons with common criminal intention have kidnapped her. Accordingly, this report was entertained vide Report No.09 in the daily diary dated 30.06.2015 in Police Post Jhullas. An FIR under Section 87/2015 under 366/109 RPC was registered in Police Station Mendhar.

11. It further appears from the record that prosecutrix and Mohd Safir had filed Writ Petition No.890/2015, which was disposed of by this Court on 25.06.2015 with a direction to police to consider record to be produced by the petitioners with regard to their age and also to consider the threat perception to the petitioners and provide them with security.

12. Thereafter, it further appears that father of the prosecutrix, Mohd. Shafi, filed LPA against the order dated 25.06.2015 and order of the learned Single Judge was modified and it was held as under:-

"We, accordingly, modify the judgment and order dated 25.06.2015 to the extent that while considering the proof as regards the age of petitioners/respondent Nos.4 & 5, the record which may be produced by the appellant shall also be examined by the concerned agency.

Disposed of accordingly."

13. Thereafter, police completed the investigation and during investigation the statement of prosecutrix under Section 164-A Cr.P.C. was also recorded and accordingly, thereafter challan was produced before learned Sessions Judge Poonch. Accused were charge sheeted and statement of prosecutrix came to be recorded during the trial. During trial, the prosecutrix turned hostile and did not support the prosecution case and stated that she has solemnized marriage with Mohd. Safir with her own consent; that she made telephonic call to Mohd. Safir and went along with him with her own consent; that her parents were not happy with the marriage, so police brought her and forced her to give statement against Mohd. Safir during investigation; that she gave the statement during the investigation on the saying of the police. Her parents took her to their home. She has one daughter from the marriage with Mohd. Safir.

14. Thereafter, Mohd. Safeer was granted bail on 01.12.2016. In cases of rape and kidnapping, the statement of prosecutrix is important and in case the statement of prosecutrix inspires confidence of Court, conviction can be based on the sole testimony of her statement. In the present case, when the prosecutrix has turned hostile, then there would be no scope of conviction of accused. It has also come in the statement of the prosecutrix that she had one child from the wedlock with Mohd. Safir. They are living happily.

15. Keeping in view all facts of the case, I am of the opinion that various orders passed by Court below, which are impugned in this petition, do not suffer from any infirmity.

16. Hence, all the orders of the Court below are upheld.

This petition is dismissed accordingly.

(Sanjay Kumar Gupta) Judge Jammu 11.08.2017 Pawan Chopra