

Present: : **Sri S.K. Kabra**
Addl. Sessions Judge (FTC)
Dibrugarh

Sessions Case No. 170/2021

Order

03.02.2022

Learned Addl. P.P. is present.

Shri M. P. Todi, learned counsel for the accused is present.

Accused Shri Arun Kerketa is present along with bailor, who has stated that he shall stand as bailor/surety for the accused in future as well.

1. Argument on the point of charge heard.
2. The instant case has arisen out of the Chabua P.S. Case No. 222/2017 registered u/s 366 of IPC. The said FIR was registered pursuant to ejahar dated 07.09.2019 lodged by Shri Anup Saikia, husband of the victim. The allegation in the ejahar is to the effect that on 03.09.2019 the accused kidnapped the wife of the accused. After completion of investigation, I.O. filed charge sheet u/s 366 of IPC against the accused person.
3. The cognizance of offence was taken on 04.12.2021.
4. Learned Addl. P.P. submits that I.O. has rightly filed the charge sheet u/s 366 of IPC. On the other hand, learned counsel for the accused submits that there is no material against the accused person to frame charges u/s 366 or any other provisions of IPC or any other law.
5. **Evidence/Material against the accused and their analysis.**

I.O. has filed charge sheet under Section 366 of IPC. And to prove the charge against the accused, the I.O. has named eight witnesses in the charge


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sheet. Out of said eight witnesses, PW6, PW7 and PW8 are the policemen (including I.O.), who were investigating the case. The evidence of other witnesses are discussed below :-

6. The witnesses Anup Saikia/ complainant (PW1), has stated that on 03.09.2019 the accused had taken away his wife.
7. The witnesses Smt. Buty Gohain (PW2), Smt. Bhani Teli (PW3) and Shri Mukti Gohain (PW4) have made similar statement before police. They have stated that victim had gone from her home to learn stitching at around 01:30 pm on 03.09.2019 and she did not return till evening. Thereafter they learnt that the accused person had taken away the victim.
8. The witness Dr. N. Shyam (PW5) is the M.O. on duty from Deptt. Of Forensic Medicine, AMCH, Dibrugarh. Record reveals that the victim had refused to undergo any kind of medical examination and same was reported by the said witness to the I.O.
9. In addition to above, I.O. had also got recorded the statement of victim under Section 164 of CrPC before learned JMFC, Dibrugarh. I have perused the same. Victim had categorically stated in her statement before learned JMFC that two years back she had eloped with the accused and stayed with the accused for two years in Delhi. She also stated that her husband Shri Anup Saikia use to assault her after consuming liquor and therefore she left him. She also stated that she is having love affair with the accused and as such she eloped with him. She also stated that the accused had not kidnapped her but she had gone with him out of her own free will and consent.
10. Admittedly, victim is major. She is aged about 26 years and she had gone with the accused out of her own free will and free consent.


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11. Upon summation of aforesaid evidence on record, I am of the considered view that there is no prima facie material to frame charge under section 366 of IPC or any other offence against the accused person Sri Arun Kerketa. In fact, the material on record is in consonance with the innocence of the accused person.

12. It is settled law that if there is no prima material to frame charge against the accused person, the accused must be discharged and he should not be harassed with the unwanted trial. In this regard, I rely upon the judgment of Hon'ble Supreme Court passed in P. Vijayan v. State of Kerala, (2010) 2 SCC, wherein it is held that –

"Section 227 was introduced in the Code to avoid wastage of public time when a prima facie case was not disclosed and to save the accused from avoidable harassment and expenditure".

13. In view of materials on record and the discussion made above, accused person Shri Arun Kerketa is hereby discharged u/s 227 of Cr.P.C. The bail bonds and sureties stand discharged.

14. The instant Sessions Case No. 170/2021 stands disposed of on the aforesaid terms.


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