(2006) 09 DEL CK 0009

Delhi High Court

Case No: Criminal Rev. 617/06 and Criminal M.A. 9690/06

Om Prakash Srivastav @ Babloo		APPELLANT
	Vs	
State		RESPONDENT

Date of Decision: Sept. 18, 2006

Acts Referred:

- Penal Code, 1860 (IPC) - Section 120B, 364A, 387

Citation: (2007) CriLJ 696 : (2006) 133 DLT 706 : (2006) 92 DRJ 198

Hon'ble Judges: Badar Durrez Ahmed, J

Bench: Single Bench

Advocate: Farook M. Razak, S.P. Singh Chaudhary and Faisal Farook, for the Appellant; Pawan Sharma, for the Respondent

Final Decision: Dismissed

Judgement

Badar Durrez Ahmed, J.
This revision petition is preferred against the order dated 24.7.2006 passed by the learned additional Sessions Judge which is an order on charge. Subsequent to this order, on 28.8.2006 the charge has also been framed against the present petitioner along with others u/s 120-B/364-A/387 IPC.

2. Two points were raised by the learned Counsel for the petitioner. The first point was that insofar as the charge u/s 364-A IPC is concerned, the same is not made out on the basis of the allegations contained in the prosecution case. He submits that the ingredients of the section which pertain to kidnapping/abduction for demand of ransom, is not made out. The second point raised by the learned Counsel for the petitioner is that the petitioner was extradited from Singapore for certain offences which do not include the present offences. He Therefore submitted that he could not be charged or tried for those offences for which he was not extradited. I have heard the learned Counsel for the petitioner as well as the Council for the state.

3. An FIR was registered in this case on 15.04.2003. It was initially registered under Sections 387/120-B IPC. Section 364-A was added later on. The FIR was registered on the basis of a complaint filed by one Sheetal P. Singh who alleged that one Nitin Shah who was his business rival in the manufacturing and marketing of high security vehicle registration plates tried to persuade the complainant to sell his company to him. After failing in his efforts to do so, the said Nitin Shah is alleged to have engaged the services of the present petitioner who was allegedly a notorious criminal. It is further alleged that about a few months back the complainant''s relative Nagesh Kumar had informed him that one Bobby and Jitender alias Jittu of the Babloo gang were inquiring about him in Sultanpur, U. P. Later, about four months prior to the registration of the FIR, it is alleged that Jitender called the complainant on the phone and tried to persuade him to meet the petitioner in Lucknow jail to settle the matter relating to Nitin Shah. It is further alleged that on 11.3.2003, when the complainant was going from Lucknow airport towards the city, his taxi was intercepted by a red Maruti 800 carrying 3-4 men. One of them introduced himself as Jitender and all these persons forced the complainant to go to the main entrance of Lucknow jail where the present petitioner was allegedly standing inside the main gate. It is further alleged that the present petitioner first spoke to be complainant on the mobile phone and, later, when the complainant approached the gate, he spoke to him face to face. It is then alleged that the petitioner threatened the complainant and told him to pay Rs. 25 lakh, which, according to the petitioner, as the allegation goes, was the sum which his men had incurred as expenses in locating the complainant on the directions of the said Nitin Shah. It is a further alleged that the petitioner directed the complainant to participate in a meeting with Nitin Shah in his presence wherein the fate of the business of high security vehicle registration plates in India would be decided by him (the petitioner). This direction was, of course, given under the threat that if he did not participate then the complainant would be killed. Thereafter the complainant is alleged to have left the said Lucknow jail. The next morning, the complainant allegedly caught the first flight for Delhi without participating in any scheduled business activity. It is then alleged that between the 24th and 26th of March 2003 several SMS messages were received from Jitender stating that the complainant should come to Lucknow immediately as Nitin Shah''s men have reached Lucknow. Thereafter the complainant is alleged to have received threatening calls from Jitender as well as the present petitioner. It is further alleged that for the last about two weeks prior to the filing of the complaint, the complainant also received calls of the same nature from one Fazloo from abroad. It is lastly alleged that the on 14.4.2003, one day prior to the registration of the FIR the said Fazloo again called and threatened the complainant that he would meet with dire consequences if he did not pay an amount of Rs. 5 lakhs by 15.4.2003. Three SMS messages from Jitender were also received by the complainant as follow-up threats. It is also mentioned in the complaint that other threats at the behest of the said Nitin Shah were also meted out to friends and associates of the present complainant by the petitioner and his associates. It is in these circumstances that the complaint was filed and the said FIR was registered on 15.4.2003.

4. Let me now take up discussion with regard to the first point raised by the learned Counsel for the petitioner qua the charge u/s 364-A IPC. In this regard it must be noted that before the learned additional Sessions Judge, the petitioner had taken the plea that no offence u/s 364-A IPC was made out on the basis of the allegations contained in the prosecution case. It was specifically submitted that there was no "demand of ransom" but, even if it assumed that a demand was made, it was not made to "any other person" as mentioned in Section 364-A IPC. Considering this submission raised on behalf of the petitioner, the learned Additional Sessions Judge was of the view that the present case is not one which is solely based on the allegation of demand of ransom for the person abducted. He was of the view that as per the allegation the complainant had been threatened to be killed by the present petitioner, who, in conspiracy with other co-accused, had got him abducted and had threatened him. The threats as per the allegation, did not stop on the day of the alleged abduction but continued even thereafter. The learned Counsel for the petitioner submitted that the learned additional Sessions Judge"s observation that, in case the person kidnapped or abducted is threatened with hurt or death or even if there is an apprehension to that effect, the offence can be said to have been committed, is contrary to the statutory provisions as well as the judicial pronouncements inasmuch as there must be a demand of ransom. The learned Additional Sessions Judge had also come to the view, after examining the provisions of Section 364-A IPC, that compelling the other person to pay ransom was only one of the ingredients of the section and was not the only essential ingredient. The learned Additional Sessions Judge remarked:

As such, demand of ransom is only one of the ingredients of Section 364-A IPC and is not the primary ingredient. In case the person kidnapped or abducted is threatened with hurt or death or even if the accused by his conduct gives rise to a reasonable apprehension that the abducted or kidnapped person may be put to death or hurt, the offence u/s 364-A IPC can be said to have been made out.

5. The counsel for the petitioner submitted that this conclusion of the learned additional Sessions Judge is clearly erroneous inasmuch as without the demand of ransom the provisions of Section 364-A IPC cannot be invoked. I am in agreement with the learned Counsel for the petitioner that this conclusion of the learned additional Sessions Judge is not in consonance with the law on the point. But, this does not mean that the petitioner has not been correctly charged u/s 364-A IPC. This will become clear shortly.

6. In order to examine the full import of the submissions made by the learned Counsel for the petitioner it would be necessary to have a look at the provisions of Section 364-A IPC which read as under:

364-A. Kidnapping for ransom, etc. -- Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes, hurt or death to such person in order to

compel the Government or any foreign State or international, inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death or imprisonment for life and shall also be liable to fine.

7. Construing the Section in the factual backdrop of the present case and shorn of unnecessary words the same would read as follows:

Whoever abducts any person and threatens to cause death or hurt to such person in order to compel any other person to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine.

8. A plain reading of the provision in this manner indicates that first of all there must be an abduction of a person. The abductor must then threaten that person to cause death or hurt to him with the object to compel any other person to pay a ransom. To put it differently, an offence u/s 364-A IPC can be said to have been committed, when A abducts B and threatens to hurt or kill B, in order to compel C to pay a ransom. According to the learned Counsel for the petitioner, B, the abducted person, must be different from C, the person who is compelled to pay a ransom on threat of hurt or death of B. It was, in this context, contended by the learned Counsel for the petitioner that the complainant was allegedly abducted and it was the complainant who was threatened and the demand for money/ransom was also made to the complainant himself and not to any other person. Therefore, the ingredients of Section 364-A were not made out. On the face of it, this argument appears to be very attractive. It appears to be logical also.

9. However, we need not enter into semantics or debates with regard to the extent and scope of Section 364-A IPC because the Supreme Court in the case of Malleshi Vs. State of Karnataka, has examined this provision in some detail. There is also the decision of a division bench of this Court in the case of Netra Pal v. State (NCT of Delhi) 2001 CRI LJ 1669 (DEL). In Netra Pal (supra) a division bench of this Court was of the view that the essential ingredient to attract the provisions of Section 364-A is that there has to be a demand by the kidnapper on the complainant or any of his relations asking for the payment of ransom. And, this demand must not remain with the kidnapper but must be communicated. In that case, the facts were that one master Tanu Johri was kidnapped by the accused who had wrongfully confined him. It was established on record that the accused then took master Tanu to his village at Bilgari. It was also proved in evidence that the letter, purported to be the ransom claim for Rs. 50,000/-was recovered from the possession of the accused when he was apprehended. The point for consideration in that case was whether this letter recovered from the accused would constitute a demand "to pay a ransom". The division bench held that the letter remained in the pocket of the kidnapper and was never communicated and Therefore did not constitute a demand to pay a ransom. In paragraph 8 of the said decision the division bench observed as under:

8. As already pointed out above to attract the provisions of Section 364-A, IPC, prosecution has to prove that the accused kidnapped or abducted the child, kept him

under detention after such kidnapping and that the kidnapping was for ransom. So far as kidnapping and detention is concerned those have been established in the facts of this case. But by mere recovery of letter Ex.P-1 purported to have been written by the accused indicating a demand of Rs. 50,000/- by itself, to our mind, would not be covered under the expression "to pay a ransom". For the purpose of getting paid a ransom a demand has to be made and communicated. Unless the price of retrieval or rescue is made the question to pay a ransom would not arise. Therefore, the essential ingredient to attract the provisions of Section 364-A is that there has to be a demand by the kidnapper on the complainant or any of his relations asking for the payment of ransom. "To pay" means to set in motion the demand for payment. Demand cannot be by keeping the letter in one''s pocket. It has to be communicated to the person from whom the demand to pay is made. Unless that is done prosecution cannot succeed in covering its case u/s 364-A. In the case in hand neither the demand was raised on the family of the kidnapped boy nor communicated. Therefore, mere writing a letter and keeping it in his pocket would not tantamount to be a demand to pay ransom.

10. This decision is an authority on the point that a demand for ransom has to be made and it has to be communicated. If it is not so made or communicated then the offence u/s 364-A IPC is not made out. In the light of this, Therefore, the observations of the learned Additional Sessions Judge indicated above are not correct. But, this does not mean, as pointed out above, that a charge u/s 364-A cannot be framed in the present case.

11. The Supreme Court in the case of Malleshi (supra), after examining the provisions of Section 364-A IPC, also concluded that there must be a demand and the same has to be communicated. However, the Supreme Court observed in paragraph 15 of the said the decision that the demand can be conveyed to the victim, that is, the person abducted. It also observed that there can be no definite manner in which the demand is to be made and that who pays [or is to pay] the ransom is also not a determinative factor. The Supreme Court was of the view that it cannot be laid down as a straight jacket formula that the demand has to be made to a person who ultimately pays [or is to pay]. It was of the view that the essence of abduction [under the said section] was causing a person to stay in isolation coupled with a demand for ransom. For an offence u/s 364-A IPC to be made out there must be an abduction and it must be with the object to extract a ransom and the demand for the same has to be communicated. This is the ratio of the decision of the Supreme Court in Malleshi (supra). Therefore, if one considers the decision of the Supreme Court as well as the decision of the division bench, it becomes absolutely clear that the demand of ransom can be made not only to a third person but to the victim himself. It is also not necessary as to who pays the demand; it could be a third person or the victim himself. And, there is no definite manner in which the demand is to be made. In these circumstances, the pleas raised by the learned Counsel for the petitioner on this issue are not tenable.

12. The second point raised by the learned Counsel for the petitioner is that the petitioner was extradited from Singapore for certain offences which do not include the present

offences. He submitted that in view of Section 21 of the extradition act and in view of the law as declared by the Supreme Court in Daya Singh Lahoria etc. Vs. Union of India and Others etc., , the petitioner cannot be tried in this case and no charge could be framed against the petitioner because he was not extradited for these offences. He referred to the Supreme Court decision wherein the following was observed at page 522 of the said report:

In view of the aforesaid position in law, both on international law as well as the relevant statute, in this country, we dispose of these cases with the conclusion that a fugitive brought into this country under an extradition decree can be tried only for the offences mentioned in the extradition decree and for no other offence and the criminal courts of this country will have no jurisdiction to try such fugitive for any other offence.

13. In so far as I am concerned, this issue of the petitioner not being capable of being tried for the present offences in as much as he was not extradited for the same is no longer open to debate because a learned single judge of this Court decided this very issue arising out of this very FIR by an order dated 24.05.2004 reported in Om Prakash v. State 2004 3 AD (CRI) DHC 181. This issue has been examined and the contention of the petitioner that is sought to be raised before me was raised before that bench and was repelled. The decision of the Supreme Court in Dayal Singh Lahoria''s case was also cited and the learned single judge was of the opinion that the same was not applicable inasmuch as the present offence was committed after the petitioner had been extradited and was not an offence prior to the extradition order.

14. In this way, both the points raised by the learned Counsel for the petitioner cannot be sustained. The charges as framed against the petitioner do not call for any interference. This revision petition is dismissed.