

(2010) 09 DEL CK 0444

Delhi High Court

Case No: Criminal M.C. No's. 1726 and 4154 of 2009

Vijay Goel

APPELLANT

Vs

State &lt;BR&gt; Atul Jain Vs CBI

RESPONDENT

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**Date of Decision:** Sept. 6, 2010**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 323
- Penal Code, 1860 (IPC) - Section 120B, 347, 364, 364A, 365

**Hon'ble Judges:** S.N. Dhingra, J**Bench:** Single Bench

**Advocate:** Sidharth Luthra and Rajesh Kr., in Criminal M.C. Nos. 4154 of 2009, Mohit Mathur, in Criminal M.C. No. 1726 of 2009, for the Appellant; Harish Gulati in Crl. M.C. Nos. 4154 of 2009, Harish Gulati in Crl. M.C. No. 1726 of 2009, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

Shiv Narayan Dhingra, J.

By these two petitions, the petitioners have assailed orders dated 7th February, 2009, passed by the learned ACMM and dated 8th May, 2009, passed by learned ASJ and prayed that both the orders be quashed.

2. Both the petitioners were facing trial in case FIR No. RC/SIB/2002/E/0002/SIU-IX, registered by the CBI on 4th March, 2002 on the complaints made by Ms Joelle Clark and Ms Joanna Hoff forwarded by Metropolitan Police of Scotland Yard, London, on 29th June, 2002. The investigation in the matter was completed and charge-sheet was filed in the year 2003. Learned MM after completion of formalities, committed the case for trial to the Court of Sessions. The learned Sessions Judge vide order dated 10th November, 2003, discharged some of the accused and also opined that since the demand of ransom, after kidnapping of two ladies, was not communicated by the accused persons to the family members of the victims, no case for framing charges u/s 364A IPC was made out. Thus, charges were framed for offence u/s 347,

364, 365, 384, 467, 471 and 120B of IPC. One of the accused Vikas Jain challenged the order of learned ASJ of framing charges against him and vide order dated 13th December, 2006, he was discharged. After the order dated 10th November, 2003, wherein the learned ASJ had considered that offence u/s 364A IPC was not made out, the trial proceeded before learned CMM and thereafter before learned ACMM and some of the witnesses were examined. Thereafter Public Prosecutor for CBI moved an application that in view of the judgment of Supreme Court in *Maleshi v. State of Karnataka* 2004 III, AD CrI. SC 6333, offence u/s 364A IPC was made out against the accused persons, as such, the case be remitted back to Sessions Court as the case would be a Sessions Trial case. This application was decided by the learned ACMM vide his order dated 7th February, 2009, and the learned ACMM allowed the application and committed the case u/s 323 Cr.P.C. to the Court of Sessions opining that an offence u/s 364A IPC was made out.

3. The learned Sessions Judge, to whom the case was committed, heard the arguments on the issue of charge as well as on the issue whether the case could be committed to Sessions Court and vide order dated 8th May, 2009, observed that u/s 323 Cr.P.C. the case can be committed to the Court of Sessions at any stage of trial. Section 323 Cr.P.C. reads as under:

323. Procedure when, after commencement of inquiry or trial, Magistrate finds case should be committed.--If, in any inquiry into an offence or a trial before a Magistrate, it appears to him at any stage of the proceedings before signing judgment that the case is one which ought to be tried by the Court of Session, he shall, commit it to that Court under the provisions hereinbefore contained.

A perusal of above provision of Cr.P.C. makes it abundantly clear that this section gives power to MM to commit a case to the Court of Sessions at any stage of trial. This power of committal of a case to the Court of Sessions was necessary because if during trial from the evidence of witness it is revealed that though the accused have been charged on the basis of police challan for lesser criminal offences, but the actual offences committed by the accused were more grievous and serious and it was a Session Trial case, the case can be committed by the MM for Session Trial. So, if a case is going on before the Court of MM u/s 304A, i.e. death by negligence, but, during evidence it is revealed that it was not a case of death by negligence, but it was a case of culpable homicide, the Court of learned MM is duty bound to commit the case to the Court of Session for trial so that trial of the case may proceed before the Court of appropriate jurisdiction and it would be for the Session Court to frame additional charge on the basis of evidence recorded.

4. There is no dispute that in the present case investigation revealed that demand of ransom was made from the two foreigners who were kidnapped by the accused persons and they were compelled to make calls to their husband and parents to ask them to deposit money either in their bank account so that money can be withdrawn in India through debit card or send money through Western Union

Money Transfer. The learned Sessions Judge vide its order dated 10th November, 2003 was of the opinion that since the ransom demand was made only to the victims and was not communicated by accused to their relatives, an offence u/s 364A IPC was not made out. However, this position was clarified by the Supreme Court in *Maleshi v. State of Karnataka* (Supra) wherein the Supreme Court observed that it cannot be laid down as a straight jacket formulae that demand for payment has to be made to a person who ultimately pays and if the demand is made to the person kidnapped or abducted and after making a demand to the kidnapped or abducted person, merely because the demand could not be conveyed to some other person, the offence does not go out of preview of Section 364A IPC. The essence of abduction is causing to stay in isolation and demand for ransom. In view of this judgment of Supreme Court and in view of the facts of this case that the two foreigners, detained and kidnapped, were told to ask their husbands and father to deposit money in the bank so that money can be withdrawn in India through debit card of the victim, which was in possession and control of the accused person, or to transfer money through Western Union Money Transfer, I think the learned MM was right to consider that an offence u/s 364A IPC was made out against the accused persons and the learned ASJ rightly framed charge u/s 364A IPC. I find no illegality or infirmity in the two orders. This petition is hereby dismissed.