

CRIMINAL REVISION

Present: **The Hon'ble Justice Ashim Kumar Roy**

C.R.R. No. 565 of 2010

Judgment On: 31-03-2010.

Rabi Sengupta

versus

State

POINTS:

PUBLIC SERVANT -Petitioner an Excise Constable -Participation of petitioner in abduction - No prior sanction of the Government-Petitioner, whether can be prosecuted - Code of Criminal Procedure, 1973 S.197.

FACTS:

One Sk. Safiul was abducted by four miscreants. Having received such information, his father, the defacto complainant accompanied by the local people started searching for him. They found Sk. Safiul confined in a room inside the lodge by the miscreants, who claimed themselves to be police personnels. At that time the petitioner, who is an Excise Constable was found present along with the said miscreants and was arrested by the police. Following the aforesaid incident a First Information Report relating to offences punishable under Sections 363/365/419/386/34 of the Indian Penal Code was registered. The police also recovered several gold ornaments from the possession of the said miscreants. In the Trial Court, the petitioner moved an application for discharge, but the Learned Court rejected his prayer.

The petitioner assailed the impugned order on the sole ground that the petitioner is admittedly an Excise Constable and he was arrested while he was on duty but the case against him was started without any prior sanction under Section 197 of the Code of Criminal Procedure, which is absolutely illegal.

HELD:

The petitioner is an Excise Constable and is not such a public servant who cannot be removed from his office without the prior sanction of the Government. By no stretch of imagination can it be said that the petitioner committed the alleged offences either while acting or purporting to act in discharge of his official duty. In any event, abducting any person for ransom and confining him in a secret place cannot be the part of official duty of any Excise Constable.

Para-3

CASE CITED:

Sankaran Moitra Vs. Sadhna Das & Anr, (2006) 2 SCC (Cri) 358.

For Petitioner: Mrs. Rupna Bhattacharjee Ray

For State: Mr. Tirthankar Ghosh

THE COURT:

1. On 24th April, 2007, one Sk. Safiul was abducted by four miscreants in a Maruti Van. Having received such information his father, the defacto complainant of the case being accompanied by the local people started searching for him. In course of search they first discovered the said Maruti Van standing in front of River View Lodge near Gadiara and thereafter on further search they found Sk. Safiul was confined in a room inside the lodge by those miscreants, who claimed themselves to be the police personnels. The said miscreants then demanded a sum of Rs. 25,000/- from the defacto-complainant for release of his son. The defacto-complainant immediately informed the local police station and police arrived at the spot and rescued the son of the defacto-complainant. At that time the petitioner, who is an Excise Constable was found present along with the said miscreants and was arrested by the police. Following the aforesaid incident a First Information Report relating to offences punishable under Sections 363/365/419/386/34 of the Indian Penal Code was registered. The police also recovered several gold ornaments from the possession of the said miscreants. Subsequently the said case was ended in charge-sheet for the selfsame offences and the petitioner and others were placed on trial before the Learned Judicial Magistrate, 2nd Court, Uluberia. In the Trial Court, the petitioner moved an application for discharge, but the Learned Court rejected his such prayer. Hence this criminal revision.

2. The learned advocate appearing for the petitioner assailed the impugned order on the sole ground that the petitioner is admittedly an Excise Constable and he was arrested while he was on duty but the case against him was started without any prior sanction under Section 197 of the Code of Criminal Procedure, which is absolutely illegal. In support of her contention the Learned Counsel of the petitioner relied on a decision of the Hon'ble Supreme Court in the case of Sankaran Moitra Vs. Sadhna Das & Anr., reported in (2006) 2 SCC (Cri) 358.

On the other hand, Mr. Tirthankar Ghosh, the learned advocate appearing on behalf of the State vehemently opposed the prayer for quashing and submitted there was nothing on record that the petitioner committed the alleged offences in discharge of his official duty and according to him for prosecuting the petitioner, an Excise Constable no sanction under Section 197 of the Code is necessary.

3. I have given my anxious and thoughtful consideration to the rival submissions of the parties. Admittedly, the petitioner is an Excise Constable and is not such a public servant who cannot be removed from his office without the prior sanction of the Government. Moreover, according to the materials on record, it cannot be said by no stretch of imagination that the petitioner committed the alleged offences either while acting or purporting to act in discharge of his official duty. In any event, abducting any person for

ransom and confining him in a secret place cannot be the part of official duty of any Exercise Constable.

4. This criminal revision has no merit and accordingly stands dismissed. Interim order, if any, stands vacated.

5. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgment to the parties, if applied for, as early as possible.

(Ashim Kumar Roy, J.)