

**IN THE COURT OF ADDL. DISTRICT & SESS. JUDGE-I cum SPECIAL JUDGE,
KAIMUR AT BHABHU
IA No. 01/2021 Str. No. 194 of 2017
Bhabua P. S. CASE NO. 328 of 2006
STATE Vs. Suffique Sheikh & Ors.**

08.09.21 The record is put up for order on petition dated 05.02.2021 filed under Section 227 of Cr.P.C. by the petitioners accused namely **1. Mahajabin Khatoon, 2. Baby Khatoon, 3. Shakira Khatoon and 4. Subbi Khatoon**. Present Sri Pramod Kumar Tiwari, learned counsel on behalf of the petitioner and Sri Virendra Singh learned A.P.P. for the State.

ORDER

By filing the present petition, the petitioners have sought discharge from their liability in Bhabua P.S. Case No. 328 of 2006 filed under Section 366/34 of the IPC. It is submitted by the counsel of the petitioners that there is no material on record for the framing of charge against the petitioners as no offence under the alleged sections is made out against any of the petitioners named in the present petition. The perusal of the FIR and the statements of the witnesses recorded under Section 161 of the Cr.P.C. show that the allegations regarding the commission of the alleged offence are only against one accused i.e. Ashfaq. The victim in her statement to the police during investigation stated that she willingly left her house and went along with the accused Ashfaq. No other accused has been named by her to have played any role in the alleged offence. In her statement recorded under Section 164 of Cr.P.C., the victim denied the factum of rape or of kidnapping. The medical report attached in the record determined her age to be falling in the range of 19 to 20 years. In the statement recorded under Section 164 Cr.P.C. also, the victim admitted her age to be 20 years. Considering the fact that the victim was a major girl on the alleged date of crime who left her home out of her own will and went along with the person she claimed to be in love with and the fact that in her statement recorded before the Magistrate, she did not level any allegation against any of the named accused, no offence can be said to have been made out. Moreover, the prime accused of the case, that is, Ashfaq is dead now and his name has been expunged from the record. The petitioners have no direct allegation against them. Hence, it is a fit case for the discharge of the petitioners from their liability in the case.

The Special P.P. opposed the discharge petition. The counsel argued that the perusal of the record shows that the informant has alleged that on 24.10.2006 at about 4:00 P.M. the accused Ashfaq along with his father Shafeeq Mishtri and his mother and his sister Subban Shamma came and invited her daughter(victim) for a feast at their home. Even though the informants wife tried to make an excuse, the petitioners insisted and took the victim along. When the daughter of the informant did not return till late in the evening, the informant went to inquire about her whereabouts and the mother of the accused Ashfaq informed him that

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the accused Ashfaq had taken her to the house of one Mantu Miya. When the informant went to the house of Mantu Miya to inquire about her, he was informed that the victim has already been sent home. But when he returned, he did not find her daughter available. The circumstances alleged points towards the involvement of the petitioners in the alleged crime. The witnesses examined in para No. 06, 07, 08, 21, 22 and 30 of the case diary have all supported the prosecution story. The witness examined in Para 21, 22 & 30 supported the fact that the accused Ashfaq was having love affair with the victim and the family members of both, victim and the accused, were all aware of the relationship. The suspicion raised by the availability of the supporting statements of the witnesses has not been sufficiently explained by the counsel for the petitioners. It is a matter of trial to find whether the evidence are sufficient to convict the person facing allegation or not. At the stage of charge framing, the scope is quite narrow. At this stage the court cannot make an observation about the veracity of the allegations levelled against the petitioners.

Considering the submissions advanced by the counsels in the light of the interpretation of the Hon'ble Supreme Court in *Sajjan Kumar v. CBI* 2010 (9) SCC 368; *Union of India v. Prafulla Kumar Sanal and others* 1979 (3) SCC 4; *P Vijayan v. State of Kerla* AIR 2010 SC 663, the court is of the opinion that discharging the petitioner from the liability of this case would not be proper. Hence, the discharge petition dated 12.07.2018 filed by the accused Kallu Miya, Naushad Miya, Parwan Miya and Rinku Miya is hereby dismissed. Now to put up on 24.08.2021 for hearing on framing of charge.(Dictated)

Sd/-

**A.D.J.-Ist-cum-Spl. Judge
Kaimur at Bhabua**

