



Miscellaneous Form No.
(M) 34 to Form No (M) 36 respectively

FORM A

IN THE COURT OF THE ADDITIONAL DISTRICT & SESSIONS JUDGE
5th COURT, MALDA

-:- Present -:-

Susmita Chowdhury
Additional Sessions Judge,
5th Court, Malda.

J.O. Code W.B. 000958

Date of Judgment :06-06-2026
Sessions Case No. - 225 of 2021

Sessions Trial No. 16/2022

Registration No. 225/2021

[Ref: English Bazar PS Case No. 418/2000 dated 04-12-2000]

G.R Case No. 1899/2000

Charge U/S 336/363/372 IPC

Complainant- State of West Bengal
Represented by- Md. Ikbal Alam Abja
.....Ld. P.P. in charge for the State.

Accused- **1. Khaleque Momin**
Represented by- Sankar Chowdhury
.....Ld. Advocate for the accused persons

FORM-B

Date of Offence	13-11-2000
Date of FIR	04-12-2000
Date of charge-sheet	27-05-2001
Date of Framing Charges	23-03-2022
Date of commencement of Evidence	23-11-2022
Date on which Judgment is reserved	Nil
Date of the Judgment	06-06-2026
Date of the Sentencing Order, if any	Not applicable



Accused details:

Rank of accused	Name of Accused	Date of arrest	Date of release on Bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of Detention Undergone during Trial for purpose of Section 428, Cr.P.C.
1.	Khaleque Momin	05-12-2000	02-02-2001	U/S 363/366/372 IPC	Acquitted	Not applicable	Not applicable

FORM C

LIST OF PROSECUTION/DEFENCE/COURT WITNESS

A. Prosecution:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW 1	Abdul Majid Momin	De facto complainant
PW2	Kamnur	Victim Lady
PW3	Dukhu Momin	Independent Witness
PW 4	Abdul Goni Moni	Independent Witness

B. Defence witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
	NIL	



C. Court witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
	NIL	

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution :

Sr. No.	Exhibit Number	Description
1.	Exhibit-1	Signature of PW1 on the written complaint.

B. Defence :

Sr. No.	Exhibit Number	Description
1.	Nil	

C. Court Exhibits :

Sr. No.	Exhibit Number	Description
	NIL	

D. Material Objects:

Sr. No.	Material Object Number	Description
	NIL	



JUDGMENT

1. Prologue

The instant case is under section 363/366/372 of the Indian penal code (hereinafter, IPC). The case was initiated by English Bazar Police Station (hereinafter, PS) on the basis of the written complaint lodged by Mojit Momin.

2. Thumbnail of prosecution story

Factual matrix of the case in a nutshell is that one Mojit Momin lodged a written complaint against the accused person before O.C English Bazar P.S alleging that on 13.11.2000 at about 12.00 noon the accused person allured minor sister of the defacto complainant namely, Kamnur Khatun and kidnapped her to marry her illegally. After expiry of considerable period of time his minor sister did not return home. After searching in various places defacto complainant came to know that the accused person took away his minor sister to Delhi with intention of illicit relationship with her and to procure his minor sister. English Bazar P.S started English Bazar P.S. Case No. 418 of 2000 dated 14.12.2000 u/s 363/365 I.P.C. against the accused person.

3. Investigation and Proceeding towards trial

The Criminal Law was set in motion. The concerned P.S undertook investigation and finally submitted a charge sheet disclosing offences under section u/s 363/366/372 of I.P.C.

4. Charge

On consideration of allegations, a formal charge was framed u/sec. 363/366/372 IPC against the accused person accordingly on 23.03.2022.

The contents of the charge was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried in open Court.

5. Evidence of the Prosecution

The prosecution, in order to establish the charge against the accused person, has examined four witnesses. The testimony of all those witnesses may be summarized in the following manner.



Defacto informant (Elder Brother of victim girl)

PW-1 the defacto informant stated that on the date of occurrence his sister Kamnur Khatun was missing and he came to know from the co-villagers that the his sister left the home with accused person and so he lodged complaint in P.S. He further disclosed that within one month his sister returned home. On the basis of his deposition his signature in the written complaint was marked as Exbt.

Victim Lady

PW-2, Kamnur Khatun the victim lady deposed that her parents arranged her marriage and put pressure upon her for which she left her house and she went to Delhi.

Other local witnesses

PW-3, Dukhu Momin and PW-4, Abdul Goni Moni could not divulge anything regarding the instant case.

1. Examination of Accused person under section 313 Cr.P.C

After closing of the evidence of prosecution, the sole accused person was examined under section 313 Cr.P.C. The accused person pleaded innocence but did not adduce any defence witness.

2. Points for consideration

1. Whether the prosecution has been able to bring home the charges against the accused person beyond all shadow of reasonable doubt or not?
2. Whether there is delay in lodging the F I R and how far does it affect proving of the present case?

Decision with Reasons

3. Whether the prosecution has been able to bring home the charges against the accused persons beyond doubt

If, the minor leaves her parental home without any promise, offer or inducement from the accused, it cannot be said that an offence of kidnapping is made out. Of course, if the accused lays a foundation by inducement, allurement etc., and that influences the minor or weighs with her in leaving



her guardian's custody and keeping and going with the accused then it is difficult to accept that the minor had voluntarily come to the accused.

In the instant case the elder brother of the victim lady (PW-1) disclosed that the victim lady (PW-2) went away with accused but victim lady (P.W.2) disclosed that she left her home due to pressure of marriage by her parents and she went to Delhi. The victim lady (PW-2) could not state the actual place wherefrom she had been recovered. So, there is no iota of evidence that the victim left her parental home with any promise, offer or inducement from the accused person.

In the four corners of the evidence of the elder brother of the victim lady (PW-1), no inducement or allurement by the sole accused person, Khaleque Momin, influencing the victim lady (PW-2), is found. The victim lady (PW-2) has also not divulged any allurement or inducement being caused upon her by the sole accused person, Khaleque Momin.

The prosecution has failed to adduce any cogent evidence regarding the involvement of the sole accused person with regard to the procurement and/or induction of said victim girl by applying of any means, so that said victim girl would be forced or seduced to have illicit intercourse with another person or selling the minor victim girl for purposes of prostitution. So, it may safely be concluded that the prosecution has miserably failed to prove the offence punishable under section 366/372, IPC.

4. Delay in lodging the FIR

F I R is expected to contain truthful account of the incident occurred due to proximity of time in lodging the same with the concerned police station. Delay in initiating criminal proceeding by way of registering F I R at belated stage increases the probability of concoction and falsehood in the story of the prosecution. But, sometime delay in making the criminal case into motion is not uncustomary or unnatural because soon after the incident the mentality of the victim or his family member is shaken or perplexed to such an extent due to sudden shock as it requires some time space to cope up with the aftershock and to settle down for reaching to the mainstream of the society for lodging the complaint against the perpetrator. But at the same time, the court is not unmindful that each days delay is required to be explained in such a logical manner and expression so as to the chance of tampering and/or concoction of fact and false implication relating thereto may get extinguished.

In the present case, the alleged incident took place on 13.11.2000 and the defacto complainant lodged written complaint on 04.12.2000. But prosecution could not produce anything to substantiate explanation of delay of twenty one days. So, there is 21 days delay which has not been explained by the prosecution. In the light of the above noted discussion, after taking into account of non explanation of delay and after having taken look of the entire evidence on record including the deviation of victim lady from the entire prosecution story, negative inference can be drawn as to the case of the prosecution for delay in lodging F.I.R.



11. Epilogue

On the wholesome appreciation of the evidence on record, it can be safely concluded that the testimony of the victim girl deviated from the prosecution story. Her conflicting statement is neither in conformity with the facts stated in the FIR nor does the other witness of the prosecution including the parents of the victim lady support the story of prosecution and no positive evidence has been led by the prosecution for proving the offence of abatement of the alleged offence by the other accused person. The prosecution evidence is therefore, discarded after enlarging the accused to benefit of doubts. Accordingly, the case of prosecution fails.

Hence, it is.

ORDERED

that the accused person namely Khaleque Momin is not found guilty of the offence punishable under Sections 363/366/372 of I.P.C and he is acquitted of the offence under Section 235 (1) of the Code of Criminal Procedure.

The accused person is set at liberty. The bail bond of the accused person shall remain in force till next 6 months period from the date of passing of this judgment as per section 437A of Code of Criminal Procedure.

The seized alamats, if any, is to be disposed of as per law after the expiry of appeal period.

Note in the Trial Registrar and update the C.I.S.

Let a copy of this judgment be sent to the Ld. District Magistrate, Malda and Secretary, D.L.S.A, Malda.

Dictated and corrected by me

Additional Sessions Judge,
5th Court, Malda

Additional Sessions Judge,
5th Court, Malda

(Susmita Chowdhury)
J.O Code WB00958
Additional Sessions Judge,
5th Court, Malda