



Magnum Lex
Advocates & Consultants

NEWSLETTER

Issue III, Dated: 19.01.2021

JUDGEMENTS

1. Anversinh Vs. State of Gujarat.

Consent of a Minor is not a defence against charge for Kidnapping – Supreme Court of India

The brief facts of the case are that the Appellant has impugned the judgment pronounced by the High Court by which his conviction under Section 376 of the Indian Penal Code, 1860 (IPC) was overturned, but the charge of kidnapping under Sections 363 and 366 of IPC was upheld and consequential sentence of rigorous imprisonment of five years was maintained. The Appellant and prosecutrix were in love with each other. The prosecutrix left her home and went away with the Appellant to his village. After a Police Complaint by the family of the prosecutrix, they were able to locate both of them and after a medical examination of the prosecutrix an FIR was filed against the Appellant. The trial court held the Appellant guilty for rape and kidnapping of the prosecutrix under Section 376, 363 & 366 of IPC. The High Court set aside the charge for rape as there was clear evidence that the relationship between the Appellant and the Prosecutrix was consensual and therefore the Appellant was charged for the offence of kidnapping under IPC.

The Hon'ble Supreme Court observed that “A perusal of Section 361 of IPC shows that it is necessary that there be an act of enticing or taking, in addition to establishing the child's minority (being sixteen for boys and eighteen for girls) and care/keep of a lawful guardian. Such 'enticement' need not be direct or immediate in time and can also be through subtle actions like winning over the affection of a minor girl. However, mere recovery of a missing minor from the custody of a stranger would not ipso-facto establish the offence of kidnapping. Thus, where the prosecution fails to prove that the incident of removal was committed by or at the instigation of the accused, it would be nearly impossible to bring the guilt home.”

The Hon'ble Apex Court further observed that “It is apparent that instead of being a valid defence, the appellant's vociferous arguments are merely a justification which although evokes our sympathy, but can't change the law. Since the relevant provisions of the [IPC](#) cannot be construed in any other manner and a plain and literal meaning thereof leaves no escape route for the appellant, the Courts below were seemingly right in observing that the consent of the minor would be no defence to a charge of kidnapping. No fault can thus be found with the conviction of the appellant under [Section 366](#) of IPC.”

Link:

https://main.sci.gov.in/supremecourt/2010/17003/17003_2_010_32_1501_25373_Judgement_12-Jan-2021.pdf

NOTIFICATIONS

1. Notification repealing the Securities and Exchange Board of India (Central Database of Market Participants) Regulations, 2003 – SEBI (13.01.2021)

In exercise of the powers conferred by Section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Securities and Exchange Board of India hereby repeals with immediate effect the Securities and Exchange Board of India (Central Database of Market Participants) Regulations, 2003 published in Part-III, Section 4 of the Gazette of India, Extraordinary, under notification of the Securities and Exchange Board of India number F. No. SEBI/LE/26/2003 dated the 20th November, 2003.

1. The repeal of the said regulations shall not affect-
 - i. the previous operation of the said regulations or anything done or omitted to be done or suffered therein;
 - ii. any right, privilege, obligation or liability acquired or accrued or incurred under the said regulations;
 - iii. any penalty or punishment incurred in respect of any contravention or offence committed under the said regulations;

- iv. any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty or punishment as aforesaid.
2. Any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty or punishment may be imposed as if the said regulations had not been repealed.

Link: https://www.sebi.gov.in/legal/regulations/jan-2021/notification-repealing-sebi-central-database-of-market-participants-regulations-2003_48760.html

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