

**IN THE COURT OF ASSISTANT SESSIONS JUDGE,  
MORIGAON :::::::::: ASSAM.**

**PRESENT : Ms. M. Hussain, AJS,**  
Asstt. Sessions Judge, Morigaon.

**JUDGMENT IN SESSIONS CASE NO. 07/2019**

**U/S 366A IPC**

[Arose out of G.R. Case No. 1808/2016]

[Committed by learned CJM, Morigaon]

**State of Assam**

**- Vs -**

**1. Md. Majaharul**

S/O Md. Umar Ali

Vill. Pub Chetuai Khaity,

P.S. Laharighat,

District – Morigaon (Assam).

...Accused person.

**A P P E A R A N C E :**

Advocate for the State : **Mr. N. A. Choudhury, Addl P.P.**

- And -

Advocate for the accused : **Mr. J. A. Bhutto.**

Date of framing charge : 19.03.2019.

Date of recording Evidence on : 06.04.2019, 12.06.2019

Date of hearing Argument on : 12.06.2019.

Date of delivering the Judgment on : 13.06.2019.

**J U D G M E N T**

**FACTS & GENESIS OF TRIAL:**

1. Prosecution case in nut shell is that informant Md. Akabuddin filed a written ejahar stating inter-alia, that on 15.07.2016 at about 12.00 noon, taking advantage of absence of his family members, accused person Md. Rajdul kidnapped his minor daughter. Hence, this case.

2. On the basis of said ejahar Mayong police station registered the same being Mayong P.S. Case No.119/16, U/S 366 IPC and started investigation. On completion

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of investigation, the Investigating Officer submitted charge-sheet against accused persons Md. Majaharul and Rajdul Shama **U/S 366A IPC.**

**3.** The case being exclusively triable by Hon'ble Court of Sessions, was committed by learned CJM, Morigaon after complying with the provision of Section-207 Cr.P.C as per mandate of Section-209 Cr.P.C. Upon committal of the case, Hon'ble Sessions Judge, was pleased to make over the case to this Court, for trial and disposal.

**4.** As per direction, accused person Md. Majaharul appeared before this Court.

**5.** The prosecution during the course of trial, examined altogether 2 (two) witnesses including the victim. After closure of the prosecution evidence, at the instance of prosecution, the accused person is examined **U/S 313 Cr.PC.** The defence case is of total denial of the prosecution allegation. The accused person expressed reluctance to adduce defence evidence.

**6.** I have heard **Mr. N. A. Choudhury**, learned Addl. P.P. and **Mr. J. A. Bhutto**, learned counsel for the accused person. Also carefully perused the materials on record.

**7. POINT FOR DETERMINATION :**

- i. Whether accused person on 15.07.2016 at about 12.00 noon induced informant's minor daughter/victim with intent that the said victim may be or knowing that it is likely that the victim will be forced (or seduced) to illicit intercourse with him and whether accused person thereby committed an offence punishable – **U/S 366A IPC ?**

**THE DECISION & THE REASONS THEREOF :**

**8. P.W-1,** Akabuddin deposed in his evidence that victim is his daughter. In the year 2016 the occurrence took place. He was absent at home. While returning home in the evening he came to know that his daughter /victim became untraceable. His wife Sahara Khatun was present at home at that time. On search victim was not found. So, he filed this case. After two days his daughter/ victim called over phone that accused person Majaharul has kidnapped her and leaving

her in Golaghat he escaped. On the next day Dulal Uddin, Abdul Kuddus , Mojibur Rahman and he went to said place and he found victim and accused person there and picked up from there and entrusted to police station. At that time victim was about 16 years of age. Victim reported him that one person namely Rajdul (he pleaded ignorance about address) was also present with accused person. But from Morigaon it was the present accused who took her away. On the next day of occurrence he filed this case. He identified Exhibit-1, the said ejahar and Exhibit-1(1), his signature. In cross examination he deposed that Majaharul is his nephew. He occasionally comes to his residence. Victim used to go for sojourn along with accused person Majaharul. On that day without informing when victim went with Majaharul accordingly, due to misunderstanding he filed this case. P.W-1 deposed that actually accused person is innocent.

**9. P.W-2,** Victim deposed that accused person is her cousin. About 3/ 4 years ago when accused person came to their house, she went with accused person for a sojourn without informing her family members. At that time she was about 18 years. She stayed in his house for 4 days. Her parents misunderstood and on suspicion filed this case. Her father recovered her. She identified Exhibit-2 as her statement before learned magistrate and Exhibit-2(1),(2) as her signatures. In cross examination she deposed that accused person did not force her nor allured her to go with him. Accused did not have physical relationship with her. Due to misunderstanding the case was filed. Accused person is innocent. She deposed before learned magistrate being tutored by villagers and out of fear.

**10.** From bare perusal of Section **366A IPC**, it appears that there are three essential ingredients to constitute offence of procurement of minor girl:-

- i) The victim must be induced by accused;
- ii) She must be minor;
- iii) She must be induced by accused person to go from any place or to do any act with intent that the victim may be or knowing that it is likely that, she will be, forced or seduced to illicit intercourse by another person.

**10A.** The word "inducement" even though not defined under the Code, it is one of the basic requirements **U/S 366A IPC**. As per "Oxford Advanced Learner's Dictionary" the word 'induce' and 'inducement' means as under.

'Induce ' - to persuade or influence somebody to do something.'

'Inducement ' - a thing that persuades somebody to do something.

As per literal meaning ' inducement ' is an act or process of enticing or persuading another person to take a certain course of action. Inducement may amount to bargain or allurements in given facts and circumstances.

**11.** It appears, in cross-examination, PW-1 (informant) deposed that victim used to go for sojourn along with accused person Majaharul. On that day without informing parents when victim went with Majaharul accordingly; due to misunderstanding they filed this case. Victim is the kernel of prosecution case. She herself denied accused person having any physical relation with her. Her positive evidence borne in her cross examination shows that accused person did not force her nor allured her to go with him. Accused did not have physical relationship with her. Due to misunderstanding the case was filed. She herself deposed that accused person is innocent. From evidence, "inducement" at the instance of accused person is totally absent. As a corollary prosecution failed to prove all the necessary requisites of u/s 366A IPC. From victim's evidence necessary requirements u/s 366A IPC is lacking. Father (P.W.-1) deposed that due to misunderstanding case was filed.

**12.** Hence, the very mens rea, envisaged u/s 366A IPC lacks on part of accused person in this case. The main thing is that the prime witness victim and informant gave direct clean chit to accused person. From the above discussion and the analysis of evidence on record goes on to show that prosecution has failed to prove the case **U/S 366A IPC** against the accused person beyond all reasonable doubt.

### **RESULT / O R D E R**

Accused person Md. Majaharul stands acquitted **U/S 366A** of IPC.

His bail bond stands extended to six months w.e.f today.

Let the record of G.R.Case No. 1808/2016, be sent back along with a copy of this judgment and order.

Judgment pronounced in open Court and given under my hand and seal of this Court on 13<sup>th</sup> day of June, 2019, at Morigaon.

Typed to my dictation and corrected by me.

Asstt. Sessions Judge, Morigaon.

Asstt. Sessions Judge, Morigaon.

**APPENDIX**

1. The prosecution has examined the following witnesses :-  
  
PW – 1 = is Akabuddin (informant)  
PW – 2 = is victim
  
2. The prosecution side Exhibits :  
  
Exhibit-1 = is the ejahar  
Exhibit-2 = is the statement before learned magistrate u/s 164 Cr.P.C.
  
3. Defence side has examined witness..  
  
Nil.
  
4. Defence side Exhibits :  
  
Nil.
  
5. Court witness & Exhibits.

Asstt.Sessions Judge, Morigaon