

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.493 of 2014

Arising Out of PS.Case No. -null Year- null Thana -null District- JEHANABAD

Md. Kalam son of Md. Salam, resident of village- Khazpura, P.S.-
Makhdumpur in the district of Jehanabad

.... Petitioner/s

Versus

1. 1. The State of Bihar through the Director General of Police Government
of Bihar, Patna
2. Shama Khatoon Wife of Kalam Ahmad, resident of village- Khazpura, P.S.-
Makhdumpur in the district of Jehanabad

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Gajendra Pratap Singh, Advocate

For the Respondent/s : Mr. Mrigendra Kumar, A.C. to G.A.-11

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 09-03-2015

By filing this application under Articles 226 and 227 of the Constitution of India, the petitioner seeks quashing of the first information report in Makhdumpur P.S. Case No.23 of 2014 dated 17.1.2014 registered for the offences punishable under sections 363 and 366A of the Indian Penal Code.

According to the informant Shama Khatoon, her daughter, namely, Sazia Khatoon aged about 12 years studying in Class-VIII, was abducted by the petitioner while she was going to her school. On enquiry from father of the petitioner Md. Salam, he threatened the informant to leave the place or else she also would meet the same fate. The informant suspected that her minor daughter has been kidnapped

for marriage.

On the basis of the aforesaid allegation, Makhdumpur P.S. Case No.23 of 2014 was registered and investigation was taken up. The case is still under investigation. In course of investigation, the victim was recovered and her statement was recorded under section 164 of the Code of Criminal Procedure in which she has disclosed her age to be 16 years and the learned Magistrate who recorded her statement also has assessed her age to be 16 years. She has categorically stated in her statement that about a month ago while she was at her residence the petitioner threatened her on phone that if she fails to come to *Pai Bigha* within half an hour, her brother who is playing at some distance in the village would be kidnapped. On receipt of such threatening on phone, the victim immediately went to *Pai Bigha*. The petitioner forcibly took her on motorcycle first to Gaya Railway Station and then to Asansol. At Asansol, she was kept for a month. The petitioner married her at Asansol and *Nikah* was performed according to the Muslim rites at Gaya.

Learned counsel for the petitioner has submitted that since the victim has married the petitioner out of her own sweet will at Asansol and *Nikah* was performed at Gaya, no offence under the Penal Code would be attracted in the facts and circumstances of the case. He has further submitted that since the victim had attained the

age of puberty, she was free to give her consent for marriage as per Muslim law and in such case prosecution of the petitioner is an abuse of the process of court. In support of his submission he has relied upon an unreported order of Jharkhand High Court passed in Cr.W.J.C. No.34 of 2001 dated 7th May, 2001.

Per contra, learned counsel for the State has submitted that the application is devoid of any merit as the victim was minor on the date of marriage. He has further submitted that the victim has not stated at any point of time that she had voluntarily married the petitioner. On the contrary, in her statement recorded under section 164 of the Code of Criminal Procedure, she has alleged that she was threatened to come to *Pai Bigha* and from there she was forcibly taken to Gaya and then to Asansol where the alleged marriage in question had taken place.

Having heard the parties and perused the record, I find substance in the arguments advanced by the learned counsel for the State. The order dated 7.5.2001 passed in Cr. W.J.C. No.34 of 2001 is of no help to the petitioner as the facts of that case was not identical to the facts of the present case. In that case, the victim and the accused were major and out of their own sweet will they had married together. Furthermore, it was the victim who was one of the petitioners in that case and she had submitted that her parents and the relatives were not

happy with the marriage and they were harassing and coercing her husband. In the present case, the victim herself has stated that she was forced to accompany the petitioner to Gaya and Asansol under threat of kidnapping of her brother Farhan Alam. Admittedly, the victim is a minor girl. The gist of the offence of kidnapping is taking or enticing away of minor within the specified age limits. The age limit fixed by the statute under section 361 of the Indian Penal Code in case of the girl is 18 years. Hence, I am of the considered opinion that the allegations made in the FIR do constitute a cognizable offence. At the stage of investigation, the plausible defence of the accused is not to be considered by the court for reaching out to any conclusion regarding *bona fide* of the FIR. It is for the investigating agency to find out the truth behind the allegations made in the FIR on the basis of materials collected in course of investigation.

For the reasons assigned, hereinabove, the application is dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

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