

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.37650 of 2012

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1. Gopal Ram S/o Suresh Ram, Resident of Village Mahada, Navtoliya, P.S.
Rajoun, District Banka.

.... Petitioner/s

Versus

1. The State of Bihar
2. Prahlad Ram S/o Lakhan Ram, R/o Village Mahada (Navtolia), P.S.
Rajoun, District-Banka.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Praveen Kumar

For the Opposite Party/s : Mr. J.Upadhaya (App)

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

5 09-04-2015 Heard learned counsel Mr. Praveen Kumar appearing on behalf of the petitioner and learned A.P.P. for the State. In spite of notice to the informant, opposite party no.2, nobody appeared on his behalf.

2. This application under Section 482 of the Code of Criminal Procedure has been filed by the petitioner for quashing the order dated 08.03.2011 framing initial charge under Section 366 of the Indian Penal Code and then subsequent proceeding in Sessions Trial No.1242 of 2010 arising out of Rajoun P.S. Case No.38 of 2010 and also the order dated 28.08.2012 and the entire proceeding of the said Sessions Trial.

3. It appears that opposite party no.2 lodged the complaint case against the petitioner alleging that the petitioner



had kidnapped the daughter of opposite party no.2, who was aged about 14 years. Under Section 156 (3) of the Code of Criminal Procedure, the matter was sent to the police and then formal F.I.R. was instituted. After investigation charge sheet was submitted and then charge was framed on 08.03.2011 and trial started. At the time of judgment on 28.08.2012 the court below amended the charge.

4. The learned counsel for the petitioner submitted that during the trial the victim lady i.e. the daughter of opposite party no.2 was examined as P.W.2, who disclosed her age as 20 years. The court also assessed her age 20 years. The daughter i.e. victim lady clearly stated that she out of her own will went with the petitioner and married him and is residing with him in Delhi. A child was also born to her. It appears that this occurrence took place two years prior to her examination before the Court as witness. Now, therefore, the fact is that the victim lady, who is said to have been kidnapped by the petitioner, is living with the petitioner as wife and husband and they have got their offspring.

5. The learned counsel for the petitioner relied upon a decision of this Court in the case of **Prajapati Saran Sinha @ Prajapati Sinha & Anr. Vs. The State of Bihar & Anr., 2008 (3) P.L.J.R. 267** and submitted that on mere technical ground the

life of the victim or the petitioner should not be spoilt.

6. Perused the statement of the victim lady i.e. daughter of opposite party no.2, which has been annexed as Annexure 2. She has clearly admitted that she is residing with the petitioner as wife and husband and the petitioner never kidnapped her. They married in temple. This Court in the aforesaid case i.e. **Prajapati Saran Sinha** (supra) has held that “there is dispute with regard to actual age of the victim. However, one thing is clear that at the time of the alleged occurrence she was not a child of tender age incapable to understand the consequences. At present, she appears to have attained majority. She was on the verge of the majority at the time of occurrence. Therefore, mere on technicality the life of the victim cannot be allowed to be spoilt. This Court relied upon a decision of the Supreme Court in the case of **S. Varadarajan v. State of Madras, A.I.R. 1965 SC 942.**”

7. In the present case, at our hand, the occurrence took place in the year 2009. Her age has been assessed by the Court in the deposition, which was recorded in the year 2011 i.e. after two years. Therefore, on the date of occurrence either she was 17 or 18 years. In such circumstances, it cannot be said that she was of tender age incapable of understanding the consequences.

8. In view of the above facts now if the prosecution

against the petitioner, who is the husband of the daughter of opposite party no.2, is allowed to continue, it will not only harass the petitioner but also will spoil the life of the petitioner including the life of the daughter of opposite party no.2. In my opinion, therefore, it will be nothing but abuse of process of Court.

9. In view of the above discussion I, in exercise of inherent jurisdiction under Section 482 of the Code of Criminal Procedure, quash the entire proceeding including all the orders in Sessions Trial No.1242 of 2010 pending in the Court of A.D.J., F.T.C.-IV, Banka/any other transferee Court.

10. Thus, this criminal miscellaneous application stands allowed.

(Mungeshwar Sahoo, J)

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