

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.14912 of 2013

Arising Out of PS.Case No. -74 Year- 2012 Thana -RAMGARHWA District- EAST CHAMPARAN
(MOTIHARI)

- =====
1. Mukesh Paswan Son of Shayam Deo Paswan Resident of Village- Sakarar Bahuari Tola Kishan Toli, P.S.- Ramgarhwa, District- East Champaran.
 2. Kiran Devi Wife of Mukesh Paswan, Ex W/O Meth Sah Resident of Village- Sakarar Bahuari Tola Kishan Toli, P.S.- Ramgarhwa, District- East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar
2. Meth Sah Son of Late Bhagat Sah, Resident of Village- Sakarar Bahurari, P.S. Ramgarhwa, District- East Champaran.

... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL ORDER

7 16-07-2015

Heard learned counsel for the petitioners and learned A.P.P for the State.

The present application under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') seeks quashing of the order dated 11.09.2012 passed by the S.D.J.M., Raxaul at Motihari in Ramgarhwa P.S. Case No. 74 of 2012, by which he has taken cognizance under section 394 of the Indian Penal Code after having found prima facie case against the petitioners.

The brief facts of the case are that the opposite party no. 2 lodged an F.I.R. with the police stating that the petitioner no. 1 and another accused Deepak Paswan had



forcibly taken away the wife petitioner no. 2 on a motorcycle apprehending that she had been kidnapped with ill intention. Accordingly, the case came to be registered for offence punishable under sections 363/34 of the Indian Penal Code with the petitioners and Dilip Paswan named as accused. It appears that the supervisory authority directed the investigating officer to submit police report under Section 173 of the Code under section 494 of the Indian Penal Code but the investigating officer seems to have committed error by submitting chargesheet against the petitioners under Section 394 of the Indian Penal Code. It appears that further even learned Court without detecting such lapse on the part of the investigating officer and apparent error in the chargesheet took cognizance as the section mentioned in the order impugned taking cognizance is also 394 of the Indian Penal Code.

Learned counsel for the petitioners submits that section 394 of the Indian Penal Code is not applicable in the present case as the same relates to voluntarily causing hurt in committing robbery which is not the case of either the prosecution or the defence. It is submitted that the Court has thus committed error in taking cognizance as there has been no application of mind as is required under the law. Learned counsel submits that after due deliberation and consideration by the Panches and their consent, the petitioner no. 2 married petitioner no. 1 whom she loved.

Learned A.P.P. opposes the application and submits that from the facts enumerated above, it is clear that the chargesheet had to be submitted under Section 494 of the Indian Penal Code but due to inadvertence or maybe simple error while writing the details in the chargesheet, section 394 of the Indian Penal Code has been mentioned instead of section 494 of the Indian Penal Code.

Upon hearing learned counsel for the parties, this Court finds that the petitioner no. 2 in her statement under Section 164 of the Code before the Court had admitted that because of being turned out by the informant (husband), she herself had gone away with the petitioner no. 1 whom she desires to marry.

The stand of the petitioner no. 2 that she has married petitioner no. 1 with the consent of the Panches and in the application itself the details with regard to petitioner no. 2 shows that she has asserted herself to be the wife of petitioner no. 1, prima facie is indicative that ingredients under section 494 of the Indian Penal Code is made out since petitioner no. 2 without legally divorcing the informant has contracted marriage with the petitioner no. 1, which is the admitted position.

In view of the aforesaid, exercising inherent powers of this Court under Section 482 of the Code, this Court deems it appropriate that the impugned order taking

cognizance by the Court concerned be modified. Accordingly, the cognizance taken by the Court under the impugned order dated 11.09.2012 of the offence in the present case shall be deemed to have been taken under Section 494 of the Indian Penal Code and not under Section 394 of the Indian Penal Code. Accordingly, the Magistrate shall now proceed in the case in accordance with law.

The application stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

P. Kumar

U		T	
---	--	---	--