

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.985 of 2013

Arising Out of PS.Case No. -114 Year- 2012 Thana -BHABHUA District- -

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Chandan Kumar @ Atish Kumar Singh, S/O Ram Prasad Kushwaha @
Ram Prasad Singh, Resident of Village- Arra, P.S.- Mohania, District-
Kaimur At Bhabua

.... Petitioner/s

Versus

1. The State of Bihar
2. Manrawati Devi, wife of Baban Pandey, resident of village-Dorhi, P.S.-
Sonhan, District-Kaimur at Bhabua.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ravi Shankar Sahay
Mr.Ajay Nandan singh
Mr.Binod Kumar Yadav

For the Opposite Party no.1 : Mr. Uma Nath Mishra, Addl. P.P.

For the Opposite Party no.2 : None

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

9 23-07-2015 Heard learned counsel appearing on behalf of the
petitioner and learned Addl.P.P. appearing on behalf of the State.
However, none appears on behalf of the opposite party no.2
despite valid service of notice upon her.

The petitioner has filed the present application under
Section 482 Cr.P.C. for quashing the order dated 02.08.2012
passed in G.R. Case No.483/12 by the learned C.J.M., Bhabua
(Kaimur), whereby cognizance has been taken against the accused
persons including the petitioner for an offence under Section 366
of the Indian Penal Code and the case has been transferred to the
court of learned Magistrate for the purposes of appearance of the
accused and for commitment of the case to the court of sessions
for trial.

Admittedly, in the FIR vide Annexure-1, lodged for the



offences under Sections 366, 372 and 120B of the Indian Penal Code, the petitioner, besides two other persons, is named as an accused and there is allegation of kidnapping of the victim girl, who, indisputably, is a minor. During the course of investigation, the victim was recovered and her statement was recorded under Section 164 Cr.P.C. by the learned Magistrate on 24th April, 2012 wherein she has supported the prosecution case of her kidnapping and subsequent commission of rape upon her by the accused persons. In her statement under Section 164 Cr.P.C. vide Annexure-2 she has stated that after her kidnapping she was subjected to unnatural offence and she was ravished by one Manna Tiwary, Dilip Upadhyay and some other unknown persons, though, of course, the petitioner is not specifically named therein. On close of investigation, the police submitted charge-sheet against co-accused Raju Kumar @ Madan Kumar for an offence under Section 366 of the Indian Penal Code, but the petitioner was not sent up for trial.

Learned counsel appearing on behalf of the petitioner submits that, admittedly, the petitioner was not sent up for trial by the police and, in the whole case diary, there is no legal material, which may connect the petitioner with the crime in question. According to him, the learned Magistrate, while passing the impugned order taking cognizance under Section 366 IPC, has committed an error of record, as there is absolutely no legal material to connect the petitioner with the crime in question. It is pleaded that, in the above background, the impugned order taking cognizance is liable to be quashed by this Court.

Learned Addl. P.P. appearing on behalf of the State has opposed the prayer. According to him, the learned Magistrate was



well within his jurisdiction to differ with the police report and take cognizance of an offence against the accused persons including the petitioner. By referring to certain paragraphs of the case diary, which was summoned by this Court by an order dated 18.2.2013, particularly paragraph nos.2, 10 and 11, he submits that the petitioner has been specifically named as an accused, and he is alleged to have participated in the crime in question. Therefore, according to him, the impugned order taking cognizance cannot be legally faulted and the present application is fit to be dismissed by this Court.

After having heard the parties and on consideration of the materials available on record, this Court finds that, admittedly, the petitioner is named in the FIR vide Annexure-1 as an accused, who participated in the crime of kidnapping of a minor girl aged between 14 to 15 years. The alleged victim has not only supported the case of kidnapping, rather she has alleged in her statement recorded under Section 164 Cr.P.C. that she was subjected to commission of crime of rape as also of unnatural offence punishable under Sections 376 and 377 of the Indian Penal Code by several accused persons. However, this issue can be looked into only at the stage of framing of charge and not at this stage. It is also equally true that, on close of investigation, the petitioner was not sent up for trial, but the learned Magistrate while passing the impugned order has given cogent reasons for differing with the police report particularly by referring to different paragraphs of the case diary including paragraph nos.2, 10 and 11 of the case diary for the purposes of taking cognizance of an offence and summoning the petitioner also for facing trial.

Law has been well settled by the Hon'ble Apex Court

in the case of **Gangadhar Janardan Mhatre Vs. State of Maharashtra & Ors. [(2004)7 SCC 768]**, wherein it has been held that even if police submits final report the Magistrate shall be entitled to differ with the police report on the basis of materials available on the record and take cognizance against such accused persons who were not sent up for trial.

In view of the law laid down by the Hon'ble Apex Court in the case of **Gangadhar Janardan Mhatre Vs. State of Maharashtra & Ors.** (supra) and in view of the materials in the case dairy, which have been noticed above, as also in view of the fact that the learned Magistrate has recorded reasons for differing with the police report, this Court does not find any good ground to interfere with the impugned order dated 02.08.2012 passed by learned C.J.M., Bhabhua (Kaimur) taking cognizance for the offence under Section 366 IPC against the accused persons including the petitioner.

In the result, the present application has to fail and is, accordingly dismissed.

The interim order dated 18.02.2013 passed by a Bench of this Court stands vacated.

(Birendra Prasad Verma, J)

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