

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.35153 of 2012

Arising Out of Motihari Town PS.Case No. -54 Year- 2012 District-
EASTCHAMPARAN(MOTIHARI)

- =====
1. Suraj Mahto S/O Late Dhenuk Mahto R/O Mohalla- Thakurbari, P.S.-
Motihari, Town, District- East Champaran
 2. Vikky Kumar S/O Mahavir Mahto R/O Mohalla- Thakurbari, P.S.- Motihari,
Town, District- East Champaran
 3. Dilip Kumar S/O Mahavir Mahto R/O Mohalla- Thakurbari, P.S.- Motihari,
Town, District- East Champaran
 4. Mahabir Mahto S/O Suraj Mahto R/O Mohalla- Thakurbari, P.S.- Motihari,
Town, District- East Champaran
 5. Jhaliya Devi W/O Mahavir Mahto R/O Mohalla- Thakurbari, P.S.- Motihari,
Town, District- East Champaran

.... Petitioner/s

Versus

1. The State Of Bihar
2. Ram Babu Raut S/O Late Basanti Raut R/O Mohalla- Thakurbari, P.S.- Motihari,
Town, District- East Champaran.
3. Chandani Kumari, W/o Dilip Kumar, D/o Rambabu Raut, resident of Mohalla
Thakurbari, Motihari Tow, District East Champaran

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Shri Rakesh Kumar No.1, Advocate

For the Opposite Party No.3 : Shri Rama Kant Yadav, Advocate

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

ORAL JUDGMENT

Date: 13-03-2015

Heard the parties.

2. Ram Babu Raut, opposite party No.2 filed a written report with

Motihari Town Police Station alleging that his minor daughter, who had gone out of his house situated at Jamal Road, was forcibly taken away by the accused persons, i.e., the present set of petitioners and when he went to make an enquiry from them at their house, they assured him of the lady coming back in two to four days. Opposite party No.2 alleged that his daughter did not come and he felt that she had been kidnapped.

3. On the basis of the written report filed by the opposite party No.2, Motihari Town P.S.Case No. 54 of 2012 was registered under Section 366-A of the Indian Penal Code.

4. It appears from the record that the lady came back with accused Dilip Kumar alias Dilip Mahto and was taken into custody by the police and she was brought before a doctor for her medical examination and assessment of her age. Besides, she was also produced before a Judicial Magistrate for recording her statement under Section 164 Cr.P.C.

5. The doctor who examined the lady Chandani Kumar was of the view, on the basis of radiological findings that she could be in between 18 to 19 years of age. The findings were recorded after considering fusion of epiphyses. She made her statement before the Magistrate. In her statement under Section 164 Cr.P.C. she stated that it was she who had called accused Dilip Kumar alias Dilip Mahto to Motihari Railway Station at 6 P.M. Dilip Kumar alias Dilip Mahto was the resident of same Mohalla in which she was residing and, accordingly, Dilip Kumar came to the Railway Station where she expressed her desire to marry him. Both of them, thereafter, boarded a train for Ambala, reached there from where they went to Chandigarh and got married to each other there. The lady thereafter started living with the petitioner as his legally wedded wife and when they had come back on 2.4.2012, she was apprehended from Motihari Railway Station.

6. What appears from the medical report is that the lady was aged about 18 years. Her statement under Section 164 Cr.P.C., if considered in its entirety, points out that there was neither any attempt to taking away nor enticing away the lady from her lawful guardianship for any particular purpose especially with intent noted under Section 366-A of the Indian Penal Code. The lady was stating that it was she who had called accused Dilp Kumar alias Dilip Mahto to Motihari Railway Station where she expressed her desire to marry him and both of them boarded a train and went to Ambala and Chandigarh where they finally got married to each other.

7. Similar set of facts were placed for the trial of S. Varadarajan which trial ended in his conviction for offence of kidnapped and the appeal went up to the Supreme Court. The Supreme Court held that that Savitri, the victim was friendly to the accused S. Varadarajan and she was just above sixteen years of age but she was a college going girl. She had given call to S. Varadarajan herself from a particular place and had asked him to come to a particular temple. When S. Varadarajan reached there the lady and S. Varadarajan went to a cloth shop where the lady purchased a sari for herself and took him to a temple where she got married to S. Varadarajan. The Supreme Court was considering the factum of taking away or that relating to a minor to accompany a person. It was held in the case of **S. Varadarajan Vs. State of Madras reported in A.I.R 1965 SC 942** in paragraph 9 as under.

“It must, however, be borne in mind that there is a distinction between “taking” and allowing a minor to accompany a person. The two expressions are not synonymous though we would like to guard ourselves from laying down that in no conceivable circumstances can the two be regarded as meaning the same thing for the purposes of S. 361 of the India Penal Code. We would limit ourselves to a case like the present where the minor alleged to have been taken by the accused person left her father’s protection knowing and having capacity to know the full import of

what she was doing voluntarily joins the accused person. In such a case we do not think that the accused can be said to have taken her away from the keeping of her lawful guardian. Something more has to be shown in a case of this kind and that is some kind of inducement held out by the accused person or an active participation by him in the formation of the intention of the minor to leave the house of the guardian.”

As may appear from the above extracted part of the judgment of **S. Varadarajan (Supra)**, if there was no direct evidence indicating that accused had indeed taken away the lady out of the keeping of her lawful guardianship on blandishment and the facts further indicated that the lady was major or at the verge of it, who was able to take her own decision in her life by herself moving with the man out of her own volition, then it could not be a case of taking away or enticing away the lady out of the keeping of her lawful guardianship rather the facts could be constituting a case of simple elopement of the lady with the man.

8. I have extracted the statement made under Section 164 Cr.P.C. by the lady before the Judicial Magistrate. Her statement indicated that she had herself called accused Dilip Kumar alias Dilip Mahto and when he had come, she had shared her intention to marry him and both of them thereafter had boarded a train and went to Ambala and to Chadigarh where they got married to each other.

9. Taking away necessarily means use of some sort of force so as to moving a person out of his lawful guardianship. Enticing away means playing some sort of fraud so as to misleading the lady into a trap so as to moving out of her lawful guardianship. Neither the case of taking away nor of enticing away the lady appears committed by the accused as was pointed out by the Supreme Court in **S. Varadarajan's (Supra)** case. The Court does not find any fact available to

it which could constitute acts either of taking away or enticing away the lady so as to committing an offence for which the F.I.R. was lodged. The statement of the lady Chandani Kumari rather clearly indicates that she had taken her decision out of her own volition as she was major and quite able to take decision in respect to her life.

9. The facts do not appear constituting the offence for which the F.I.R. was lodged. In fact, it was a simple case of elopement of the lady so as to moving out with her paramour to marry him and, as such, on the facts of the case, the prosecution cannot be allowed to continue.

10. In the result, the petition succeeds. The prosecution of the petitioners by virtue of Motihari Town P.S. Case No. 54 of 2012, would be an abuse of the process of the court if such a frivolous prosecution is allowed to continue. As such, the same is quashed.

11. The petition is allowed.

(Dharnidhar Jha, J)

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