

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.41360 of 2012

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1. Shyam Sunder Prasad S/O Late Jadunandan Prasad Address Page Not Attached

2. Laxmi Narayan S/O Jadunandan Prasad

Both residents of village- Sarika, P.O. and P.S.- Mondna, District- Sheikhpura, at present residing at Sidhagora, Q.No. 18, Cross Road No. 5, P.S.- Sidhgora, Jamshedpur, District- East Singhbhum (Jharkhand)

3. Mahesh Kumar, S/o Gopal Mistri, R/o Qt. No. 22 Jamshedpur, Chaenab Road, Sakchi, P.O. & P.S. Sakchi Jamshedpur, District- East Singhbhum (Jharkhand)

.... Petitioner/s

Versus

1. The State Of Bihar

2. Kamlesh Kumar, S/o Krishna Prasad, R/o Ismilepur, P.S.- Barbiga, District- Sheikhpura, at present mohalla Patel Nagar Naishrai Town Biharsharif, P.S.- Biharsharif, District- Nalanda

3. Kundan Kumar, S/o Late Bishundeo Prasad Sinha, R/o village- Derh Gaon, P.S.-Kashichak, District- Nawada at present mohalla Patel Nagar Nail Sarai Town Biharsharif, P.S.- Bihar Sharif, District- Nalanda

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar Verma,
Mr. Krishna Prasad,
Mr. Amresh Kumar Mishra,
Mr. Suman Kumar Verma &
Mr. Pramod Kumar Prasad

For the O.P. Nos. 2 & 3: Mr. Devendra Kr. Sinha, Sr. Advocate &
Mr. Pramod Kr. Sinha, Advocate

For the State : Mr. Rana Randhir Singh (APP)

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL ORDER

4 06-05-2015 Heard learned counsel for the petitioners and State.

This is a petition for quashing the order dated 30.04.2012 passed by C.J.M., Biharsharif taking cognizance for offence under Sections 365/34 of the Indian Penal Code disagreeing with final form submitted by I.O.

The prosecution case is that the victim is the

brother-in-law (Sala) of the petitioner and there is allegation that petitioner kidnapped him, took to Jamshedpur and kept him in confinement for 10 months, and victim any how managed to escape.

The learned counsel for the petitioner submitted that the occurrence alleged to have been committed on 05.09.2010 but F.I.R. lodged on 8.09.2010, but the trial court while taking cognizance did not consider the delay in lodging the First Information Report. The victim was though missing but was not traced by police and has return of his own with a cooked up story. The statement of the victim was not recorded under Section 164 Cr.P.C. after he return back. There is variation in the material statement of the victim before police in case diary in paras-30 and 48. Hence, it is submitted that the learned Magistrate has mechanically passed the order without appreciating the material.

However, the allegations made in complaint make out an offence and the Court at this stage is only to see whether a prima facie case is made out but cannot meticulously examine the fact. However, the Magistrate at the stage of taking cognizance only require to see whether a prima facie cognizable offence is made out on the police report submitted by the police.

However, having regard to fact the allegation made prima facie makes out an offence. Hence, I do not find reason

to interfere with order taking cognizance.

Hence, the petition is disposed of with a liberty to the petitioners to raise the issue at the stage of framing of the charge and the trial court, if such an exercise made shall consider and pass appropriate order at that stage.

With these observations, this application is disposed of.

(Gopal Prasad, J)

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