

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.45197 of 2012

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Angrej Yadav son of Kishun Yadav, resident of village-Baratand, P.S.-
Chakai, District-Jamui.

.... Petitioner/s

Versus

1. The State of Bihar
2. Kaleshwar Yadav son of Moti Yadav, resident of village-Baratand,
P.S.-Chakai, District-Jamui.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Nagendra Dubey, Advocate.

For the Opposite Party/s : Mr. Anand Kishore Choudhary (APP)

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO**

ORAL ORDER

4 16-04-2015

Heard learned counsel Mr. Nagendra Dubey for the petitioner and learned A.P.P. for the State. In spite of notice in admission matter to the informant-opposite party no.2, nobody appeared on behalf of the opposite party no.2.

2. This application under Section 482 of the Code of Criminal Procedure has been filed by the petitioner Angrej Yadav for quashing the order dated 10.09.2012 passed by Chief Judicial Magistrate, Jamui in Chakai P.S. Case No.141 of 2009 whereby the court below has taken cognizance under Sections 363, 366 and 120B/34 of the Indian Penal Code.

3. It appears that the F.I.R. was lodged by opposite party no.2 alleging that his daughter has been kidnapped by this petitioner and co-accused persons including the son of the

petitioner for marriage purpose. After investigation the police filed final form stating that it is a case of mistake of fact. However, the Magistrate on the basis of the case-diary took cognizance under the aforesaid sections by the impugned order.

4. The learned counsel for the petitioner submitted that the son of the petitioner i.e. Anil Kumar Yadav is co-accused, who fell in love with the daughter of opposite party no.2 and they fled away and subsequently they married and have got a child out of wedlock and they are residing with the present petitioner as husband and wife in the same house. According to the learned counsel for the petitioner, the age of the daughter of opposite party no.2 is more than 18 years as has been disclosed by the medical report as well as by herself while she was examined under Section 164 Cr.P.C.

5. Perused the final form filed by the police, which has been annexed as Annexure to this application. The police has filed the final form stating that it is a case of mistake of fact and as such the final form was filed. The daughter of opposite party no.2 was examined under Section 164 Cr.P.C. earlier wherein she has clearly stated that she was living with Anil Kumar Yadav out of her own free will. She has also stated that they are living as husband and wife. An affidavit sworn by both of them has also

been annexed wherein they have stated that they are residing together as husband and wife. In the examination under Section 164 Cr.P.C. she has disclosed her age to be 21 years. It appears that subsequently the I.O. produced the daughter from the custody of father for re-examination under Section 164 Cr.P.C. wherein she has stated that with pressure she is residing with the accused Anil Kumar Yadav but in spite of the said fact the daughter of the opposite party no.2 is residing with Anil Kumar Yadav in the house of the petitioner Angrej Yadav and they have got a child.

6. The High Court in the case of **Prajapati Saran Sinha @ Prajapati Sinha & Anr. vs. The State of Bihar & Anr., 2008 (3) P.L.J.R. 267** has held that the victim made statement that she with her own accord and free will has married the accused and is leading happy married life with him. Though she at the time of occurrence was on the verge of majority, she was not a child of tender age incapable of understanding the consequences. Therefore, mere on technicality the life of the victim cannot be allowed to be spoilt. Prosecution of her husband by any standard does not appear to be justified and, therefore, this Court quashed the prosecution itself. In the present case also from perusal of the statements of the victim lady under Section 164 Cr.P.C., it appears that she clearly stated that she is living with

Anil Kumar Yadav, co-accused as husband and wife and they have also now got a child as has been submitted by the learned counsel for the petitioner. The age has been disclosed by her as 21 years. Moreover, the medical report has been annexed with the application and the Medical Board has opined her age to be 18-19 years.

7. In my opinion, therefore, the present case is covered by the decision of this Court in the case of **Prajapati Saran Sinha** (supra). If now proceeding is allowed to continue, it will not only harass the husband of the victim lady i.e. Anil Kumar Yadav but also it will harass the present petitioner, who is father-in-law of the victim lady, i.e. the daughter of opposite party no.2.

8. In such view of the matter mere on technicality the life of the victim cannot be allowed to be spoilt. The Hon'ble Supreme Court also in the case of **S. Vardh Rajan Vs. State of Madras, A.I.R. 1965 SC 942** has held so.

9. In view of the above facts and circumstances of the case and the fact that the alleged victim lady is now residing with the co-accused Anil Kumar Yadav, who is the son of the present petitioner and they have got a child and the fact that in spite of notice the opposite party no.2 is not appearing if the proceeding is allowed to stand, it will be nothing but to abuse of the process of

the Court and there will be miscarriage of justice.

10. Accordingly, this criminal miscellaneous application is allowed and the impugned order is quashed.

(Mungeshwar Sahoo, J)

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