

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.9491 of 2009

Arising Out of PS.Case NoCase No. 786(c) Year- 2003 I District- NALANDA (BIHARSHARIFF)

- =====
1. Shailendra Kumar
 2. Ajay Kumar
 3. Anuj Kumar

All sons of Doman Garai, residents of Mangala Asthan, Ram Chandrapur, P.S. Laheri, Distt. Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar
2. Ganauri Prasad Gupta @ Ganauri Sah, son of Lata Saryug Sah, resident of Mangala Asthan, Ram Chandrapur, P.S. Laheri, Distt. Nalanda.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : None.

For the State : Mr. Ajay Kumar Singh, A.P.P.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 10-07-2015

No one appears on behalf of the Petitioners.

The Petitioners seek quashing of the order dated 14.7.2008 passed by the Judicial Magistrate, Bihar Sharif in connection with Complaint Case No. 786© of 2003 under Section 365 of the Indian Penal Code.

The case of the Complainant is that he received information that his son was Sanjiv Kumar @ Munna missing upon which he came home. He expressed his suspicion against the Petitioners of having kidnapped his son. He also filed Laheri P.S. Case No. 127 of 2001 was examined under Section 164 Cr. P.C. wherein the kidnapped boy after recovery gave somewhat implicating the Petitioners.

The admitted position is that initially Laheri P.S. Case No. 127 of 2001 was instituted with regard to the kidnapping of the son of the

Informant. After due investigation, Final Report was submitted with recommendation that the Informant be proceeded against under Sections 182 and 211 Indian Penal Code. It appears that it is only in order to screen himself from the Prosecution under Sections 182 and 211 Indian Penal Code that the present Complaint has been filed. The allegation is just oral in nature. Even on examination of the statement of the alleged victim recorded under Section 164 Cr. P.C., there does not appear any complicity of the Petitioners.

On the other hand counsel for the Complainant submits that the victim had stated that the persons who had detained him had asked as to what enmity he had with the present Petitioners which indicated that the Petitioners were also involved in kidnapping his son.

However, since after due investigation, an independent agency was of the opinion that the allegation of kidnapping was false, I would be inclined to hold that the Trial on the basis of merely oral allegation would be a nullity and, hence, the application is allowed and the Proceeding including the order dated 14.7.2008 passed by the Judicial Magistrate, Bihar Sharif in connection with Complaint Case No. 786© of 2003 under Section 365 of the Indian Penal Code, is hereby set aside.

(Anjana Prakash, J)

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