

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.15489 of 2016

Arising Out of PS.Case No. -111 Year- 2015 Thana -JOGBANI District- ARRARIA

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1. Babita Devi Wife of Jitendra Sah, Resident of Village - Jogbani, P.S. -
Jogbani, District - Araria. Petitioner/s

Versus

1. The State of Bihar.
2. Ram narayan Sah, Son of Late Kamleshwari Sah, Resident of Village -
Jogbani Ward No. 16, P.S. - Jogbani, District - Araria. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Sharma, Advocate

For the Opposite Party/s : Mr. Ataur Rahman (APP)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

3 02-09-2016

Heard learned counsel for the petitioner as well as

learned Additional Public Prosecutor.

Petitioner who initially was an accused in Jogbani PS case No. 111/2015 registered under Section 366(A) of the IPC on the written report of father of victim, namely, Ram Narayan Sah was not sent up for trial after concluding investigation, however, differing therefrom the learned ACJM, Araria summoned her along with others to face trial for an offence punishable under Sections 363(A), 366, 376/34 of the IPC vide order dated 10.02.2016, the order impugned, whereupon, challenged the same.

It is evident from the written report that allegation has been made by the informant to the extent that his daughter, Laxmi Kumari aged about 14 years, a student of Class-X of Saraswati Shishu Mandir, Jogbani, while was in a way to her school, was kidnapped by Md. Chand along with his mother, youngest sister as well as Md. Mangan, Md. Guddu, Md. Anwar

Mian, Vikas Mandal, Santosh Yadav, wife of Jitendra Sah (petitioner). The victim was recovered and her statement under Section 164 Cr.P.C. was recorded which happens to be part and parcel of the case diary as well as the same is also incorporated under para-55 of the case diary.

The learned lower court, as is evident from the order impugned, had considered the further statement of informant recorded under para-3 as well as statement of mother of victim, Gita Devi under para-4 including that of Kajal Kumari, elder sister of victim recorded under para-8 of the case diary. Surprisingly, none of them happens to be an eyewitness nor they substantiated their status as that of hearsay. It has simply been disclosed at their end that during course of search they came to know with regard to involvement of these persons including the petitioner. Moreover, after going through the statement of the victim recorded under Section 164 Cr.P.C., it is evident that she had not disclosed apart from others, with regard to presence or involvement of the petitioner. Furthermore, under para-73, the statement of the victim has been recorded whereunder she has categorically stated that wife of Jitendra Sah is an innocent and in likewise manner under para-74, the informant has stated that after recovery of the victim, and further getting proper information with regard to occurrence, presence of wife of Jitendra Sah was nowhere. It has further been disclosed that she was made an accused on mere suspicion.

The basic concept regarding appreciation of the materials at the time of taking cognizance is to the extent of tracing out a *prima facie* case. *Prima facie* means, presence of material which should be perceived at a glance. Had there been non recovery of the victim, then in that event, the statement of the informant, his wife and daughter would have been sufficient but, the suspicion as shown by the informant, his wife and the elder daughter is found completely demolished after statement of the victim having been recorded under Section 164 of the Cr.P.C. and that being so, it will be a futile attempt for the prosecution in case, petitioner is also allowed to be prosecuted on the nature of the materials having available on the record.

As such, the order impugned with regard to the petitioner is found non sustainable in the eye of law, whereupon, the same is set aside. As such, the petition is allowed.

However, it will be open for the learned lower court to invoke provision under Section 319 Cr.P.C., in case, sufficient material is found available during course of trial against the petitioner.

(Aditya Kumar Trivedi, J)

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