

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.46069 of 2013**

Arising Out of PS.Case No. -null Year- null Thana -null District- MUZAFFARPUR

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1. Urmila Devi W/o Sri Rajendra Sah Resident Of Village- Budanpur, P.S.- Dewariya, District- Muzaffarpur
  2. Nikki Kumari D/o Sri Rajendra Sah And W/o Birendra Sah Resident Of Village- Budanpur, P.S.- Dewariya, District- Muzaffarpur At Present R/o Vill.- Saraiya, P.S.- Sahebganj, District- Muzaffarpur

.... .... Petitioner/s

Versus

The State Of Bihar

.... .... Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Sanjay Kumar

For the Opposite Party/s : Mr. Damodar Prasad Tiwary

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**CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR**

**ORAL JUDGMENT**

**Date: 26-07-2016**

Heard Sri Sanjay Kumar, learned counsel for the petitioners  
and Sri Damodar Prasad Tiwary, learned A.P.P.

Two petitioners, have approached this court invoking its  
inherent jurisdiction under section 482 of the Code of Criminal  
Procedure, with a prayer to quash an order dated 25.9.2013 passed  
by learned 3<sup>rd</sup> Adhoc Additional Sessions Judge, Muzaffarpur in  
Sessions Trial No. 519 of 2013 (arising out of Dewariya P.S. Case  
No. 23 of 2012) , G.R. No. 523 of 2012 registered for the offence  
under section 363/ 366A/ 34 of the Indian Penal Code. By the said  
order petition filed on behalf of the petitioners under section 227 of  
the Cr.P.C. for their discharge was rejected.



Short fact of the case is that on the basis of fardbyan of one Nawal Kishore Singh an F.I.R. was lodged vide Dewariya P.S. Case No. 23 of 2012 for the offences under sections 363/ 366A / 34 of the Indian Penal Code against three accused persons i.e. one Sanjay Sah and both the petitioners. In the F.I.R. it was alleged that his daughter namely, Priyanka Kumari , aged about 14 years on the date of occurrence i.e. on 18.3.2012 in the morning had gone to coaching centre and thereafter, she did not return. Subsequently, the petitioner tried to get information and finally, he came to know that accused Sanjay Sah had abducted the minor daughter of the informant for the purposes of marriage. Thereafter, he went to the house of the accused Sanjay Sah to enquire. It has been disclosed in the F.I.R. that the petitioner no. 1 /wife of brother of Sanjay Sah and her daughter / petitioner no. 2 did not give proper reply and thereafter, the informant raised suspicion against the petitioners also besides the accused Sanjay Sah. During investigation the victim appeared and her statement under section 164 of the Cr.P.C. was recorded on 6<sup>th</sup> June 2012. Before the learned Magistrate, she disclosed her age as 20 years. Even the learned Magistrate also assessed her age as 20 years. In her statement u/s 164 of the Cr.P.C. she made categorical statement that she had voluntarily gone with Sanjay Kumar Sah on 18.3.2012 i.e. on the date of occurrence to



Gaziabad and she solemnized marriage with Sanjay Kumar Sah. She assured to produce marriage certificate. After conducting investigation the Police found no case under section 363, 366A / 34 of the Indian Penal Code. However, during investigation one fact emerged that the person with whom the victim girl had married was already married having two children and as such, Police submitted final report no. 58 of 2012 on 14.6.2012 for offence under section 494 of the Indian Penal Code i.e. non -cognizable offence. It is case of the petitioner that after submission of final report the learned Magistrate differing with the police report took cognizance of offences under sections 363, 366A / 34 of the Indian Penal Code and case was committed to the court of sessions. At the time of discharge since there was no iota of material even to create doubt against the petitioners, the petitioners filed petition for their discharge, which has been rejected by the learned Sessions Judge by the impugned order. Learned counsel for the petitioner by way of referring to certain facts disclosed in the case diary submits that save and except the doubt which was raised against the petitioners in the F.I.R. during investigation no material was collected against both the petitioners even then cognizance order was passed differing with the police report and the learned Sessions Judge without application of mind has rejected the discharge petition.



Sri Damodar Prasad Tiwary, learned A.P.P. tried to persuade the court that the order impugned may not be interfered with. He submits that now law is settled on the point that if there is material to draw an inference of commission of offence by an accused, that would be sufficient to frame charge and as such, he submits that the present petition is fit to be rejected.

Besides hearing learned counsel for the parties I have perused the materials available on record. It is true that while exercising power under section 482 of the Code Of Criminal Procedure normally case diary is not required to be examined, however in this case vide order dated 1.11.2013 while summoning for photo copy of the case diary this court had restrained the learned Adhoc Additional Sessions Judge III , Muzaffarpur from framing charge against both the petitioners. In this case thereafter case diary was received , which is on record. I have also examined the case diary. On going through the same the court is satisfied that the investigating officer in view of non -availability of any element of application of sections 363 , 366A/34 of the Indian Penal Code had rightly submitted final report exonerating the petitioners. During investigation one fact has emerged that the person with whom the victim girl had married was already married having two children. That was an offence under section 494 of the Indian Penal Code



which is non- cognizable and as such, final report was submitted indicating offence under section 494 of the Indian Penal Code. Obviously such allegation was available only against co- accused Sanjay Sah, not against both the petitioners. In any event, the learned Magistrate, to the reasons best known to him, differing with the police report had taken cognizance under sections 363, 366A/ 34 of the Indian Penal Code and same error has been committed by the learned 3<sup>rd</sup> Adhoc Additional Sessions Judge. It appears that without examining the record the learned Sessions Judge has rejected the discharge petition. On going through the case diary it is evident that statement of the victim was recorded under section 164 of the Cr.P.C. in which she disclosed her age as 20 years and same age was assessed by the learned Magistrate. In her statement under section 164 of the Cr.P.C. she made specific statement that voluntarily she had married with Sanjay Kumar Sah. Before recording Section 164 Cr.P.C. statement she made statement before the Police under section 161 of the Cr.P.C. in which she had stated that her father was trying to sale her. This fact has been stated in paragraph no. 55 of the case diary. Subsequently, the victim was got examined by the medical board and medical board has given specific finding that the victim girl was about 18 years old. Meaning thereby, that she was major. Once the victim, who was a major, had herself made statement

before the learned Magistrate regarding voluntary marriage, there was no reason to draw inference that the petitioners side committed any offence under sections 363, 366A / 34 of the Indian Penal Code. In view of facts and circumstances particularly the fact that there is no material on record to draw even an inference regarding complicity of the both the petitioners, certainly it is a case for discharge. Accordingly, the impugned order dated 25.9.2013 is hereby set aside.

The petitioners are discharged from the proceedings in Sessions Trial No. 519 of 2013 which is pending before the learned 3<sup>rd</sup> Adhoc Additional Sessions Judge, Muzaffarpur / concerned court.

The petition stands allowed.

**(Rakesh Kumar, J)**

Praful/-

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