

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.42683 of 2013

Arising Out of PS.Case No. -85 Year- 2012 Thana -RAMGARH District- BHABHUA (KAIMUR)

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Dablu Bind @ Dharmendra Kumar son of Laljee Bind, resident of village- Bind
Purwa Tola, P.S- Nuaon, District- Kaimur at Bhabhua.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Dhananjay Kumar, Advocate

For the Opposite Party/s : Mr. Nityanand, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 19-08-2016

Heard Mr. Dhananjay Kumar, learned counsel for the
petitioner and Mr. Nityanand, learned Additional Public Prosecutor
for the State.

2. This application under Section 482 of the Code of
Criminal Procedure (for short 'CrPC') has been filed for quashing of
the order dated 18.12.2012 passed by the learned Chief Judicial
Magistrate, Bhabhua (Kaimur) in G.R. Case No.1374 of 2012 arising
out of Ramgarh P.S. Case No.85 of 2012 whereby, differing with the
police report, he has taken cognizance of the offence punishable under
Section 366A of the Indian Penal Code (for short 'IPC') against the
petitioner and made over the case to the court of Judicial Magistrate,
Bhabhua for its commitment.



3. The prosecution case is based on the written report of one Yogendra Ram Submitted to the Officer-in-charge, Nuaon Police Station on 27th August, 2012. In his written report, the informant has stated that his daughter, aged about 16 years, went to her school on 2nd July, 2012 in the morning, but did not return thereafter. In spite of hectic search, her whereabouts could not be located. An information in this regard was given to the police station on 11th July, 2012. Later on, it came to his knowledge that his co-villager Dablu Bind had enticed away his daughter on the pretext of marriage. Since then, efforts were made to recover her, but when he failed to locate his daughter and also failed to get any trace of his co-villager Dablu Bind, the matter was being brought to the notice of the police.

4. On the basis of the aforesaid information, Ramgarh P.S. Case No.85 of 2012, was registered on 27th August, 2012 under Section 366A of the IPC and investigation was taken up. On completion of investigation, the police submitted final report holding the accusation against the petitioner to be a “mistake of fact” vide final report no.25 of 2012 dated 31.10.2012 in the court of Chief Judicial Magistrate under Section 173(2) of the CrPC.

5. On receipt of the aforesaid final report submitted under Section 173(2) of the CrPC and after going through the materials available on record, the Chief Judicial Magistrate, Bhabhua (Kaimur),

differeed with the police report and took cognizance of the offence punishable under Section 366A of the IPC against the petitioner vide impugned order dated 18.12.2012. Therefore, the present application under Section 482 of the CrPC has been filed before this Court.

6. Mr. Dhananjay Kumar, learned counsel for the petitioner has submitted that the impugned order dated 18.12.2012 is erroneous in law as also on fact. He has submitted that in course of investigation, after recovery, the victim was produced before the court by the police for recording her statement under Section 164 of the CrPC. In her statement made under Section 164 of the CrPC, on 15th October, 2012, as contained in annexure-3 to the present application, she has disclosed herself to be aged about 20 years. However, the Magistrate, recording her statement, has assessed her age, as 18 years. She has stated in her statement that she went together with the petitioner out of her own sweet will on 2nd July, 2012. She has stated that she liked the petitioner and went together with him to Varanasi, where she stayed along with him for about three months and, thereafter, they performed their marriage. She has categorically stated that none had kidnapped or abducted her and, after performing marriage, in court, she had herself went to the police station and showed papers relating to the marriage. Thereafter, the police detained her and produced her before the court. She has further stated that she wants to live together with

her husband.

7. He has further submitted that the victim was also examined by the Medical Board and, on the basis of gynaecological history, physical feature, development of secondary sexual characters and radiological examination, the Board has assessed the age of the victim as 18 to 19 years. He has submitted that once it has been found during investigation that the girl was major on the date of occurrence and, out of her own sweet will, she went together with the petitioner, under no circumstance, the Magistrate could have taken cognizance of the offence punishable under Section 366A of the IPC.

8. Per contra, Mr. Nityanand, learned Additional Public Prosecutor appearing for the State, has submitted that the Chief Judicial Magistrate has not erred in law by differing with the police report, on the basis of materials having been collected during investigation. He has submitted that it would be evident from impugned order that the Chief Judicial Magistrate had found prima facie case to be made out against the petitioner under Section 366A of the IPC. He has also submitted that the arguments advanced by the learned counsel for the petitioner can be considered by the court at the stage of framing of charge and not at the stage of taking cognizance of the offence.

9. Having heard the parties, the question, which arises in the

present case is whether or not an offence under Section 366A of the IPC is made out. In order to appreciate the fact and law involved in the present case, it is deemed necessary to extract Section 366A of the IPC, which reads as under:

“366A. Procuration of minor girl.- Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.”

10. A perusal of the aforesaid Section reveals that, in order to attract the offence punishable under Section 366A, there must be existence of the following ingredients:

- (i) that the accused induced a girl;
- (ii) that the girl was under eighteen years of age;
- (iii) that the girl was induced to go from a place or to do an act;
- (iv) that the accused did, as above, with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person.

11. In the present case, in view of the statement of the victim recorded under Section 164 CrPC, as discussed hereinabove, it would be apparent that there is no evidence that the petitioner induced



the girl in any manner. The disclosure of age by the victim, the assessment of her age by the court and the assessment of her age by the Medical Board would make it evident that the daughter of the informant was not under 18 years of age on the alleged date of occurrence. Further, the statement of the victim as recorded under Section 164 CrPC would make it evident that the daughter of the informant went together with the petitioner to Varanasi and other places out of her own sweet will and, hence, it cannot be said that she was induced by the petitioner to go from a place or to do an act. Lastly, there is no evidence that the petitioner took the daughter of the informant with intent that she would be forced or seduced to illicit intercourse with another person. In fact, there is no evidence of any other person either in sequence of allegation leveled against the petitioner in the FIR or during investigation of the case.

12. The Supreme Court in *State of Karnataka vs. Sureshbabu Puk Raj Porral* since reported in *AIR 1994 SC 966* has held that when the age of the girl, in question, is doubtful (i.e., whether 16, or 18 or 20) and the evidence shows that she went voluntarily, the question of taking her from lawful guardianship does not arise. To attract this Section, it must be shown that the girl or woman has been kidnapped or abducted from the lawful guardianship. The ratio laid down by the Supreme Court in the matter of State of

Karnataka (supra) would squarely apply to the present case.

13. Regard being had to the discussions made, hereinabove, the order impugned dated 18.12.2012 passed by the learned Chief Judicial Magistrate, Bhabhua (Kaimur) in G.R. Case No.1374 of 2012 arising out of Ramgarh P.S. Case No.85 of 2012 cannot be sustained. Accordingly, it is set aside. As a consequence thereof, the entire criminal proceedings arising out of the aforesaid police case is also quashed.

14. The application stands allowed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	