

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.7733 of 2014

Arising Out of PS.Case No. -223 Year- 2009 Thana -BIBHUTIPUR District- SAMASTIPUR

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1. Prannath Kumar @ Prannath Roy, son of Ram Udagar Rai.
 2. Shaktinath Kumar @ Shaktinath Ray, son of Ram Nihora Ray.
Both resident of Village- Dih Tabhaka, P.S.- Bibhutipur, District- Samastipur.
 3. Ajay Kumar, son of Indra Dev Singh.
 4. Pawan Kumar, son of Indradeo Singh.
 5. Manish Kumar, son of Siyaram Singh.
All resident of Village- Hazipur, P.S.- Barauni, District- Begusarai.

.... Petitioners.

Versus

1. The State of Bihar.
2. Ashok Rai, son of Late Heera Lal Roy, resident of Village- Dih Tabha, P.S.- Bibhutipur, District- Samastipur.
3. Saflata Kumari, wife of Prannath Kumar @ Prannath Roy, son of Ram Udgar Rai, resident of Village- Dih Tabhaka, P.S.- Bibhutipur, District- Samastipur.

.... Opposite Parties.

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Appearance :

For the Petitioners : M/s. Prabhat Kumar Singh and Pramod Kumar Singh, Advocates.
For the State : Mr. Navin Kumar Pandey, A.P.P.
For the Opposite Party No.3 : Mr. Sanjeev Kumar Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

Date: 30-10-2017

Heard.

2. This application, under Section 482 of the Code of Criminal Procedure, is directed against the order dated 20.12.2013 passed in Bibhutipur P.S. Case No.223 of 2009, whereby the court of the Additional Chief Judicial Magistrate, Rosera, took the cognizance of the offence under Sections 363 and 366/34 of the Indian Penal Code against the accused-petitioners on perusal of the materials available in the case diary.

3. The facts leading to this application are that the opposite



party no.2 Ashok Rai gave his written report on 31.08.2009 before the Officer Incharge, Bibhutipur Police Station alleging therein that his daughter Saflata Kumari (opposite party no.3), aged about 16 years, had gone to attend the coaching class at Dalsingsarai on 20.08.2009 but she did not return till evening. Thereafter, he started to search his daughter and, in that course, he came to know that his daughter (opposite party no.3) was seen with villagers, Prannath Kumar (petitioner no.1), Shaktinath Kumar (petitioner no.2) and Ajay Kumar (petitioner no.3), Pawan Kumar (petitioner no.4) and Manish Kumar (petitioner no.5), resident of village-Hajipur, P.S. Barauni, District-Begusarai. The informant/opposite party no.2 claimed that the accused-petitioner nos.1 and 2 with the help of other accused-petitioners kidnapped his daughter/opposite party no.3 for the purpose of marriage.

4. On the basis of the aforesaid written report of the opposite party no.2 Ashok Rai, Bibhutipur P.S. Case No.223 of 2009 was registered under Sections 363 and 366/34 of the Indian Penal Code against the petitioners.

On investigation, the police submitted the final form in the case against the accused petitioners on the ground of mistake of fact. Thereafter, the Additional Chief Judicial Magistrate, Rosera, on perusal of the materials available in the case diary took the cognizance of the offence under Sections 363 and 366/34 of the Indian Penal Code against the petitioners through the impugned order dated 20.12.2013, differing with the final form submitted by the police.



5. Learned counsel for the petitioners submits that, in fact, there was love affair in between the petitioner no.1 Prannath Kumar alias Prannath Roy and the opposite party no.3 Saflata Kumar, the daughter of the opposite party no.2, due to that reason, the opposite party no.3 left her parental house and performed the marriage with the petitioner no.1 according to her sweet will and due to their wedlock there is one baby, aged about 6 years. The opposite party no.3, at present, is also pregnant. Further submission is that, in course of investigation, the statement of the victim/opposite party no.3 Saflata Kumari, the daughter of the opposite party no.2, was recorded under Section 164 of the Code of Criminal Procedure on 22.12.2009 by the court of Sri Ambika Prasad Choudhary, Civil Judge (Junior Division), Rosera, Samastipur, in which she stated about performing marriage with the petitioner no.1 according to her sweet will due to love affair. At the time of recording the statement under Section 164 of the Code of Criminal Procedure, the victim/opposite party no.3 disclosed her age 20 years and the Civil Judge (Junior Division), Rosera, Samastipur, also assessed her age about 21 years, which would appear from Annexure-‘2’ to this application. Apart from that, in medical examination of the opposite party no.3, her age was assessed in between 18½ to 19 years by the Medical Board. The police, on investigation, submitted the final form against the accused-petitioners, on the ground of mistake of fact but the Additional Chief Judicial Magistrate, Rosera, Samastipur, illegally took the cognizance of the offence under Sections 363 and 366/34 of the Indian Penal Code against the petitioners through the impugned order differing



with the final form submitted by the police.

6. Learned counsel for the opposite party no.3 submits that due to love affair, the victim/opposite party no.3 performed the marriage with the petitioner no.1 Prannath Kumar alias Prannath Roy according to her sweet will and due to their wedlock, there is one baby, aged about six years, and, at present, she is also pregnant.

7. In the F.I.R., the date of occurrence regarding the kidnapping of the victim/opposite party no.3, the daughter of the opposite party no.2, is said to be of 31.08.2009 and her age was detailed 16 years. In the statement recorded under Section 164 of the Code of Criminal Procedure by the court of the Civil Judge (Junior Division), Rosera, Samastipur on 22.12.2009, the victim/opposite party no.3 disclosed her age 20 years and the court of the Civil Judge (Junior Division), Rosera, Samastipur, also assessed her age about 21 years. The victim/opposite party no.3 in her statement recorded under Section 164 of the Code of Criminal Procedure has stated about performing the marriage with the petitioner no.1 due to love affair according to her sweet will, which would appear from Annexure-‘2’ to this application.

8. Having regard to the facts and circumstances of the case and also considering the fact that the victim/opposite party no.3, who is said to be kidnapped by the petitioners, in her statement under Section 164 of the Code of Criminal Procedure, has stated about performing her marriage with the petitioner no.1 according to her sweet will due to love affair, the continuance of the criminal proceedings on taking the cognizance of the



offence against the petitioners through the impugned order would amount to an abuse of the process of the court.

9. Accordingly, the impugned order dated 20.12.2013 passed in Bibhutipur P.S. Case No.223 of 2009 by the court of the Additional Chief Judicial Magistrate, Rosera, taking the cognizance of the offence under Sections 363 and 366/34 of the Indian Penal Code against the accused-petitioners as well as the entire criminal proceedings of the aforesaid case is hereby quashed and this application is allowed.

(Rajendra Kumar Mishra, J)

P.S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.11.2017.
Transmission Date	15.11.2017.

