

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.48023 of 2013

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1. Krishna Mahto @ Krishan Kumar Mahto S/O Sarwajit Mahto Resident Of Village- Harnahi, P.O.- Bimwan, P.S.- Jagdishpur, District- Bhojpur, Ara
 2. Japit Mahto S/O- Late Briksh Mahto Resident Of Village- Harnahi, P.O.- Bimwan, P.S.- Jagdishpur, District- Bhojpur, Ara
 3. Sarwajit Mahto S/O- Japit Mahto Resident Of Village- Harnahi, P.O.- Bimwan, P.S.- Jagdishpur, District- Bhojpur, Ara

.... Petitioners

Versus

1. The State Of Bihar
2. Sudama Singh S/O- Sita Ram Mahto Resident Of Village- Harnahi, P.O.- Bimwan, P.S.- Jagdishpur, District- Bhojpur, Ara

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Rajiva Ranjan, Advocate.
For the State : Mrs. Sharda Kumari (APP)
For the Opposite Party No.2 : Mr. Madanjeet Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
ORAL ORDER

5 11-05-2017 The instant Criminal Miscellaneous has been filed for quashing the order dated 06.04.2013 passed by the Chief Judicial Magistrate, Ara, Bhojpur in Jagdishpur P.S. Case No. 44 of 2013, whereby and whereunder, cognizance has been taken under section 366 (A)/34 of the I.P.C.

Heard the learned counsel for the petitioners, the learned A.P.P. for the State and the learned counsel for the opposite party no.2.

As per the prosecution case, the elder daughter, aged 13 years, of the informant was kidnapped by petitioner no.1 and



when the matter was asked from petitioner no.2 he caused threats to kidnap another girl also and in the morning petitioner nos.2 and 3 came and pointed out gun and caused threats. The police during investigation got recorded the statement of the victim girl under section 164 of the Cr.P.C. wherein she has not supported the allegation of kidnapping rather she has stated specifically that she went to Delhi with Sangeeta Bhabhi and petitioner no.1 where she came to know that her father has lodged case, then she returned back. She has categorically stated that no kidnapping was done.

The police after completing investigation submitted final form against the petitioners showing the case as of mistake of facts, but the learned C.J.M. passed the impugned order taking cognizance under section 366 (A)/34 of the I.P.C. against all the petitioners.

The learned counsel for the petitioners submits that in view of statement of the victim girl recorded under section 164 of the Cr.P.C wherein she has stated her age 16 years and the learned Magistrate has also assessed her age 16 years, no offence under section 366 (A) of the I.P.C is made out and after completing investigation accordingly final form was submitted but without any basis and material the learned Chief Judicial Magistrate had passed the impugned order. The medical board has assessed the



age of the victim girl below 18 years, it means that the victim was having full knowledge and capacity of understanding and she has given her statement without any undue pressure or coercion which cannot be burshed aside so lightly.

The learned A.P.P. duly assisted by the learned counsel for the opposite party no.2, on the other hand, submits that the victim girl being minor, on her statement only no reliance can be placed and during investigation besides the informant in his further statement, witnesses Asha Devi, Raj Kumari and Satyendra Singh in their statements have also supported the prosecution case and as such the learned C.J.M. has rightly passed the impugned order.

Having considered the submissions urged at the Bar, going through the impugned order, first information report, statement of the victim girl recorded under section 164 of the Cr.P.C, copy of the final form and the Photostat copy of the case diary, it is manifest that the victim girl who is the competent witness and has got capacity of understanding has not supported the case of kidnapping rather she has specifically stated that she went out of her own will with Sangeeta Bhabhi and petitioner no.1 at Delhi and when she came to know that her father has lodged case she returned back. She has categorically stated that she was



not kidnapped by any one. This statement of the victim girl cannot be brushed aside so lightly by the statement of the informant and other witnesses simply on the ground that the victim is minor, her statement cannot be ignored. The victim has stated her age 16 years and the doctor has found her age below 18 years so she was approaching the age of 18 years and further she after understanding all the consequences has made her statement before the learned Magistrate. The learned C.J.M. has committed illegality in passing the impugned order.

In view of above, the impugned order dated 06.04.2013 is hereby quashed and consequently the entire criminal proceeding arising out of Jagdishpur P.S. Case No. 44 of 2013 is also hereby quashed.

In the result, this Criminal Miscellaneous is hereby allowed.

(Jitendra Mohan Sharma, J)

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