

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.47894 of 2013

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

- =====
1. Bharat Kumar Ray @ Bharat Roy Son Of Mahendra Roy Resident Of Village - Ujjan, Naulakha Tola, P.S.- Sakatpur, District- Darbhanga.
 2. Mukesh Roy Son Of Mahendra Roy Resident Of Village - Ujjan, Naulakha Tola, P.S.- Sakatpur, District- Darbhanga.

.... Petitioner/s

Versus

1. The State Of Bihar
2. Tarun Prasar Son Of Late Bhodh Nath Jha Resident Of Village- Ujjan, Bharampur Tola, P.S.- Tardih (Sakatpur), District- Darbhanga.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Anant Kumar Bhashkar, Advocate
For the Opposite Party/s	:	Mr. Jharkhandi Upadhyay, APP M. Surinder Kumar , Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 09-01-2017

Heard learned counsel for the petitioners, learned Additional Public Prosecutor for the State and learned counsel for Opposite Party No.2.

Petitioners Bharat Kumar Ray @ Bharat Roy and Mukesh Roy, both sons of Mahendra Roy were arrayed as accused in Madhepur P.S. Case No.117 of 2009, registered under Sections 366/366A/120B of the Indian Penal Code on the written report of Tarun Parasar Opposite Party No.2.



Allegation in the First Information Report is that Prachi Parasar @ Munga, the minor daughter of the informant, was missing from her house since 02.10.2009. On 03.10.2009 a Sanha was lodged regarding missing of Prachi. Subsequently, the informant gathered information that the petitioners and their father have kidnapped Prachi with intent to marry with her.

During investigation the witnesses examined by the police only stated that the petitioners and others are under suspicion. On recovery of the victim girl her statement under Section 164 Cr.P.C. was recorded on 15th October, 2009, wherein she stated that on 02.10.2009 she had voluntarily gone to her Nanihal without informing anyone. Thereafter, she came to know about the lodgment of the present case then she came to the Court to make her statement that no one had taken her away. She expressed her desire to go with her parents.

On the basis of the aforesaid material the police submitted charge sheet against the petitioners vide charge sheet No.135 dated 07.12.2019. Investigation was pending against the father of the petitioners. After completion of further investigation subsequent final form No.41 of 2010, dated 18.04.2010 was filed not sending up the



father of the petitioner for trial. A separate petition was filed by the I.O. for not taking cognizance against the petitioners.

However, by the impugned order dated 04.04.2012, cognizance was taken against the petitioners for offences under Sections 366A and 120B/34 of the Indian Penal Code. The same is under challenge herein under Section 482 of the Cr.P.C.

Contention of the petitioner is that since there is no substantial material collected against the petitioners during the investigation, the impugned order suffers from non-application of judicial mind and further proceeding would amount to abuse of the process of the Court. Submission is that no one claims to have seen the petitioners along with the victim and the victim in her statement under Section 164 of the Cr.P.C. specifically stated that no one had induced her to go with him nor anyone was accompanied her when she left the house voluntarily for her Nanihal.

Notice was issued to Opposite Party No.2. The same was received by the victim girl Prachi Parasar and an affidavit has been filed that Prachi is joint with her father i.e., Opposite Party No.2. It has further been informed by the learned counsel appearing on behalf of the victim girl that Prachi has already married with the petitioner



Bharat Kumar Ray @ Bharat Roy and is mother of a child from the said wedlock.

Considering the fact that there is no substantial material for further prosecution of the trial, hence, allowing the trial to go on would amount to abuse of the process of the Court. Accordingly, the impugned order stands quashed and this application stands allowed.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	
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