

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.18053 of 2014

Arising Out of PS.Case No. -69 Year- 2012 Thana -RAJEPUR District-
EASTCHAMPARAN(MOTIHARI)

- =====
1. Uma Shankar Prasad @ Uma Shankar Chaudhary, son of late Shivji Chaudhary, Resident of Village Rajepur, P.S.-Rajepur District-East Champaran
 2. Vishwa Nath Prasad @ Vishwa Nath Sah, son of late Rameshar Sah, Resident of Village Madhuwaha, P.S. Rajepur, District-East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar
2. Punita Devi, wife of Ram Sewak Rai, resident of village-Rajepur, P.S.-Rajepur, District-East Champaran.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Nachiketa Jha, Advocate.
For the State : Mr. S. Eheteshamuddin, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 03-11-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 30.03.2013 passed by the learned Judicial Magistrate, Sikrahna, Motihari, in Trial No. 2996 of 2013 arising out of Rajepur P.S. Case No. 69 of 2012 by which the learned Magistrate took cognizance against the petitioners and other accused persons.

2. The case of the prosecution is that son of the complainant insisted to go outside which was denied by the complainant saying that her son is minor and not able to go outside. It is alleged that on 20.04.2002, all accused persons arrived at the door



of the complainant and forcibly took away her minor son on jeep and he did not return. When she went to enquire into the matter from the accused persons they did not give any satisfactory reply to her rather threatened to kill her. On 23.05.2012, she along with some witnesses went to the accused persons who ousted them, abused and assaulted by fists and slaps.

3. Initially the case was registered on the basis of complaint which was sent to Police Station under Section 156 (3) Cr. P.C. and Police Case vide Rajepur P.S. Case No. 53 of 2012 was registered. The police after investigation of the case submitted final form and found the case untrue. Thereafter, on the basis of protest petition, the court below proceeded in the case treating the same as complaint and after holding enquiry, has found prima facie case against the petitioners for the offence under Sections 120B, 363, 366A and 34 of the Indian Penal Code.

4. Heard learned counsel for the petitioners and learned counsel for the State.

5. None appears on behalf of the opposite party No. 2 although his name appeared in the cause list.

6. Learned counsel for the petitioners has submitted that prior to filing of this case by the complainant, petitioner No. 1 has filed the case against son, husband and others vide Rajepur P.S. Case



No. 53 of 2012 dated 02.06.2012 for the offence under Sections 120B, 363, 366A and 34 of the Indian Penal Code for kidnapping his minor daughter wherein petitioner No. 2 is witness in that case. It has further been submitted that son of the informant has appeared in Rajepur P.S. Case No. 53 of 2012 filed by petitioner No. 1 and he has been granted bail by a coordinate Bench of this Court vide order dated 01.02.2016 passed in Cr. Misc. 55076 of 2015.

7. Learned A.P.P. has appeared and submitted that the learned Magistrate is not required to see the defence of the accused at the time of enquiry. The statement which has been made by the petitioners in this Court during hearing of the petition, can be looked into at the time of framing of charge by the court below.

8. This Court on perusal of the impugned order finds that learned Magistrate after looking into the Solemn Affirmation of the complainant and statement of three enquiry witnesses found *prima facie* case against the petitioners for the offence under Sections 365, 323 and 504 of the Indian Penal Code.

9. The learned Magistrate is only required to see *prima facie* case at the time of holding enquiry. The learned Magistrate is not required to see the defence of the accused at the stage of enquiry under Section 202 Cr. P.C.

10. Therefore, this Court does not find any illegality in



the impugned order.

11. This Criminal Miscellaneous application is accordingly dismissed.

12. Petitioners are given liberty to raise all the points as raised in this Criminal Miscellaneous application at the time of framing of charge, which shall be disposed off by the court below in accordance with law without being prejudiced by this order.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	10/11/2017
Transmission Date	10/11/2017

