

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.43917 of 2013

Arising Out of PS.Case No. -7 Year- 2013 Thana -RAXAUL District-
EASTCHAMPARAN(MOTIHARI)

- =====
1. Amjad Ali @ Amzad Mian Son Of Mubarak Mian Resident Of Village Jamubhar, P.S.-Adapur, District-East Champaran
 2. Ashraf Ali @ Afsar Ali Son Of Amzad Mian Resident Of Village Jamubhar, P.S.-Adapur, District-East Champaran
 3. Gauhar Lai @ Jafar Ali Son Of Amzan Mian Resident Of Village Jamubhar, P.S.-Adapur, District-East Champaran
 4. Mustkima Khatoon Wife Of Amzad Mian Resident Of Village Jamubhar, P.S.-Adapur, District-East Champaran
 5. Haider Ali Son Of Amzad Mian Resident Of Village Jamubhar, P.S.-Adapur, District-East Champaran
 6. Basra Khatoon Daughter Of Amzad Mian Resident Of Village Jamubhar, P.S.-Adapur, District-East Champaran

.... Petitioner/s

Versus

1. State Of Bihar
2. Kamaldeo Das Son Of Late Kishun Das Resident Of Village Koirlatola, P.S.-Raxaul, District-East Champaran

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 13-04-2017

The present petition has been filed for quashing the order dated 15-04-2013 passed by learned Sub Divisional Judicial Magistrate, Raxaul at Motihari in Raxaul P.S. Case No. 07 of 2013, by which and whereunder, the learned Magistrate took cognizance against the petitioner for the offence under Sections-366(A)/34 of the Indian Penal Code.

Heard learned counsel for the petitioners and the State.



It has been submitted on behalf of petitioners that after filing of FIR the victim girl was recovered and her statement u/S 164 of the Cr.P.C. was recorded in which, she stated that she had voluntarily gone from her house. The statement of victim girl is enclosed as Annexure-2. The police after investigation submitted final form in the case as mistake of fact. Learned Magistrate has differed with the final form, on the basis of material available in paragraphs-7 and 21 of the case, and took cognizance against the petitioners under Sections-366A/34 of the Indian Penal Code. The magistrate has stated that the victim girl was minor aged about 14-15 years. From the statement of victim girl recorded u/S 164 Cr.P.C. it appears that she has not been kidnapped by any of the persons. She had voluntarily left her house and police after investigation submitted final form as mistake of fact.

The notice was issued to opposite party No. 2 vide order dated 21-10-2013 and notice has validly been served but today no one appeared on behalf of the opposite party No. 2.

In such circumstances considering the facts of the case and also the statement of victim girl recorded u/S 164 of the Cr.P.C. and also the fact that police submitted final form after investigation finding the case as mistake of fact, the order taking cognizance passed by the court below suffers from illegality.



Accordingly, the order dated 15-04-2013 passed by learned Sub Divisional Judicial Magistrate, Raxaul at Motihari in Raxaul P.S. Case No. 07 of 2013 including entire criminal proceeding with respect of the petitioners is quashed.

This quashing petition is allowed.

(Sanjay Priya, J)

A.K.V./-

AFR/NAFR	
CAV DATE	
Uploading Date	21-04-2017
Transmission Date	21-04-2017

