

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.35465 of 2013

Arising Out of PS.Case No. -200 Year- 2010 Thana -OBRA District- AURANGABAD

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1. Bhushan Paswan S/O Jai Ram Pd. Resident Of Village- Kachanpur, P.S.- Obra, Distt.- Aurangabad.
2. Arvind Paswan S/O Jai Ram Pd. Resident Of Village- Kachanpur, P.S.- Obra, Distt.- Aurangabad.
3. Ashok Paswan S/O Jai Ram Pd. Resident Of Village- Kachanpur, P.S.- Obra, Distt.- Aurangabad.

.... Petitioner/s

Versus

1. The State Of Bihar
2. Jai Pal Ram S/O Late Rambilash Ram Resident Of Village- Manora (Bhasgarh), P.S.- Obara, District- Aurangabad
3. Pratima Kumari W/O Ashok Paswan, D/O Jaipal Ram Resident Of Village- Manora (Bhasgarh), P.S.- Obara, District- Aurangabad, At Present Residing At Village- Kachanpur, P.S.- Obara, District- Aurangabad

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Kamendra Prasad Singh
For the Opposite Party/s : Mr. S.K. Singh

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

CAV JUDGMENT

Date: 28.01.2017

Heard the parties.

By way of present application, preferred under Section 482 of the Code of Criminal Procedure, the petitioners seek quashing of the order, dated 06.04.2013 passed in Criminal Revision No. 17 of 2012, whereby and whereunder learned Sessions Judge, Aurangabad has dismissed the application of the petitioners as well as the order, dated 25.08.2011 passed by learned Sub Divisional Judicial Magistrate, Daudnagar, whereby and whereunder he has taken



cognizance against the petitioners for the offence under Section 366 (A) and 363/34 of the Indian Penal Code in connection with Obera P.S. Case No. 200/2010.

Prosecution case in brief is that that one Jaipal Ram Gave a written application before the Officer In-Charge of Obera Police Station stating that on 03.10.2010, he has gone out from the village for some work and when he came back the next morning, he came to know from the relatives that his daughter, namely, Pratima Kumari aged about 16 years has been kidnapped by the accused persons with the motive of performing marriage of one of the accused persons with the girl and also managed to take away the gold ornaments worth Rs. 15,000/-.

On the basis of the aforesaid written application Obera P.S. Case No. 200/2010, has been instituted for the offences punishable under Sections 366(A), 363 and 34. Police after investigation submitted final form, finding the case not true against the petitioners. However, learned Sub-Divisional Magistrate, Daudnagar, differing with the final form filed by the police, has taken cognizance vide order, dated 25.08.2011 against the petitioners for the offences punishable under Sections 366(A), 363 and 34 of the Indian Penal Code. It further appears that against the said order, the petitioners preferred Criminal Revision No. 17 of 2012. However, learned



Sessions Judge, vide his detailed order, dated 06.04.2013 dismissed the revision application of the petitioners.

Against the aforesaid order of dismissal of Criminal Revision and order taking cognizance, the petitioners have preferred the present application.

It has been submitted on behalf of the petitioners that as a matter of fact no kidnapping as alleged, has taken place rather the victim girl had come to Deo Surya Mandir to marry with one of the alleged accused, namely, Ashok Paswan out of her own sweet will and her statement under Section 164 of the Cr.P.C. to that effect has also been recorded by the police. Later on her statement was also recorded by the learned Magistrate under Section 164 of the Cr.P.C., where also she has reiterated her earlier statement given before the police. It has further been submitted that even the age of the girl was found between 18 to 20 and also while recording the girl's statement under Section 164 of the Cr.P.C., her age was assessed as 19 years. It has also been submitted that as a matter of fact this is out and out a matter of love affair and the girl being a major married with the Ashok Paswan. The police after thorough investigation submitted final form in this case, finding the allegations not true against the petitioners. However, learned S.D.J.M, without appreciating these facts differing with the final form submitted by the police, has taken



cognizance against these petitioners and also learned Sessions Judge dismissed the Criminal Revision filed by the petitioners, which is clearly an abuse of process of law and is fit to be quashed.

Learned Additional Public Prosecutor for the State has opposed the present application and submitted that the order of learned S.D.J.M. itself shows that there are materials available against the petitioners as such the final form submitted by the police has not been considered and cognizance has been taken against the accused persons. It has further been submitted that petitioners have preferred Criminal Revision, which was also dismissed by the learned Sessions Judge after considering the materials available in the case diary and on record, against which the present application has been filed under the garb of Section 482 of the Code of Criminal Procedure only to protect themselves from the bar imposed under Section 397(3) of the Cr.P.C. and as such there is no merit in the present application.

Having heard both sides, the main contention of the petitioners that the police investigated the matter and recorded the statement of the girl under Section 164 of the Cr.P.C., wherein the girl has clearly denied the allegation of kidnapping/abduction against the petitioners. The girl's age during her statement before the S.D.J.M was assessed as 19 years and also during the medical examination her age was assessed between 18 to 20 years. The police submitted final



form in this case, finding allegations to be not true against these petitioners. However learned S.D.J.M. differing with the final form submitted by the police took cognizance against these petitioners. However, it appears from perusal of the impugned order dated, 25.08.2011 that the learned Court below after perusing the case diary mainly the paragraph 3, 8 and 10 of the case diary has differed with the final form submitted by the police and has taken cognizance against the petitioners under Sections 366A and 363/34 of the Indian Penal Code against which the petitioners preferred Criminal Revision application and learned Sessions Judge while considering the said revision application has discussed the material in detail and come to the conclusion that the actual age of the victim girl cannot be assessed at this stage and the same can only be decided in the Trial and also considered the materials available in case diary, dismissed the revision application.

Hence it appears that there is no illegality apparent on the face of record as the finding recorded by learned Sessions Judge that this is not an appropriate stage to assess the age of the victim girl as in the F.I.R., itself the age of the victim girl was given as 16 years, where as the age of the girl during her medical examination and statement recorded under Section 164 of the Cr.P.C. was assessed to be between 18 to 20 years therefore, there is dispute regarding the age



of the victim girl and that can only be decided after adjudication in the trial. Apart from this, learned Sessions Judge as well as learned S.D.J.M has also found materials against the petitioners in the case diary.

In view of the above, in my opinion, there is no infirmity or illegality in the impugned orders, dated 25.08.2011 passed by learned S.D.J.M and 06.04.2013, passed by learned Sessions Judge and, accordingly, I find no merit in the present application, the same is hereby dismissed.

(Vinod Kumar Sinha, J)

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