

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.37213 of 2016

Arising Out of PS.Case No. -90 Year- 2015 Thana -DURAULI District- SIWAN

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Rita Devi, Wife of Sri Mritunjay Mali, Resident of Village- Balhun, P.S.- Darauli,
District- Siwan.

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Krishna Kant Singh, Advocate

For the Opposite Party/s : None

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 28-08-2017

This application under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') has been filed by the petitioner for quashing the order dated 21.12.2015 passed in Cr. Revision No. 186 of 2015 by the learned Additional District & Sessions Judge-III, Siwan whereby revision application directed against the order dated 18.08.2015 passed by the learned Judicial Magistrate, Siwan in Darauli P. S. Case No. 90 of 2015 whereby the application dated 29.06.2015 filed by the petitioner was rejected, has been dismissed and the aforestated order of learned Judicial Magistrate, Siwan has been upheld.

2. The petitioner is the informant of Darauli P. S. Case No.



90 of 2015 dated 07.06.2015 registered under Section 366-A of the Indian Penal Code (for short 'IPC').

3. Initially, she had filed a complaint case in the court of Chief Judicial Magistrate on 15.05.2015 wherein she had alleged that her minor daughter, whose date of birth is 05.09.1999, had been kidnapped for demand of ransom by the accused persons named in the complaint petition.

4. The learned Chief Judicial Magistrate sent the said complaint to the police for investigation pursuant to which Darauli P. S. Case No. 90 of 2015 was instituted under Section 366-A of the IPC against five accused persons and investigation was taken up.

5. In course of investigation, the victim girl was recovered and her medical examination was conducted. According to Medical Board, she was aged between 16 and 17 years. The statement of the victim was also recorded under Section 164 of the Cr.P.C. in which she had disclosed herself to be aged about 18 years. In her statement, she had categorically stated that she was not abducted by any one rather she had gone with accused Satyendra Mali out of her own free-will.

6. Learned counsel for the petitioner has submitted that after recording the statement of the victim under Section 164 of the Cr.P.C., the learned Judicial Magistrate, vide order dated 15.06.2015



directed the victim to be released in favour of the named accused Satyendra Mali. He has submitted that the release of the victim was made by the Court without taking into consideration the fact that the victim had not attained the age of majority. He has submitted that when the petitioner filed an application before the learned Magistrate to release the victim in her favour, the same was rejected vide order dated 18.18.2015. The said order was challenged in revision before the court of sessions. He has contended that the revisional court has erroneously rejected the application of the petitioner, vide order dated 21.12.2015. He has submitted that Section 366-A of the IPC prescribes punishment to a person, who induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with any person. According to him, the age of the victim was between 16 and 17 years and not 18 years in terms of school record. Hence, the courts below were not correct in rejecting the application filed by the petitioner for the release of the victim in her favour.

7. Despite repeated calls, nobody appears for the State.

8. I have heard learned counsel for the petitioner and perused the record.

9. In the opinion of this Court, the application dated



29.06.2015 filed by the petitioner for releasing the victim in her favour, which was rejected by the learned Judicial Magistrate, vide order dated 18.08.2015, was misconceived. Once the petitioner herself accepts that the victim was already released pursuant to the order dated 15.06.2015, there was no question of subsequent release of the victim by the court in favour of the petitioner. It is well settled that a Magistrate after passing an order on merit cannot review or recall the same in view of the provisions prescribed under Section 362 of the Cr.P.C. and, hence, filing of subsequent application by the petitioner in the court of Magistrate seeking release of the victim was wholly erroneous. In case the petitioner was aggrieved by the order dated 15.06.2015 passed by the learned Judicial Magistrate, she ought to have challenged the same before the Session Court or before this Court in revision or under Section 482 of the Cr.P.C. As the petitioner failed to take any such steps, subsequent petition dated 29.06.2015, was rightly rejected by the learned Judicial Magistrate.

10. Even otherwise, if the victim was aged about 17 years, as would appear from the record of the case, the order passed by the learned Judicial Magistrate cannot be held to be bad in view of the law laid down by the Supreme Court in *Jay Mala vs. Home, Secretary, Government of Jammu and Kashmir [AIR 1982 SC 1297]* and the judgment of Division Bench of this Court



in *Rukhasar Khatoon vs. State of Bihar & Ors. [2011 (3) PLJR 388]*.

11. Furthermore, the question of minority of the alleged victim cannot be raised by the petitioner at this belated stage. By now, the victim has certainly crossed the age of 18 years.

12. In that view of the matter, I see no illegality in the order passed by the courts below. Accordingly, the application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J.)

Kanchan/-

AFR/NAFR	NAFR
CAV DATE	NA
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