

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.33712 of 2013

Arising Out of PS.Case No. -535 Year- 2012 Thana -AHIAPUR District- MUZAFFARPUR

=====

1. Jitendra Prasad S/O Sri Rajdeo Prasad Resident Of Village- Kanhawan,
P.S- Bela, District- Sitamarhi.

.... Petitioner/s

Versus

1. The State Of Bihar
2. Ranjeet Kumar S/O Nagendra Chaurashiya Resident Of Village- Kanwa,
P.S- Bela, District- Sitamarhi.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Chandra Shekhar Anand

For the Opposite Party/s : Mr. Rajendra Pd.Nat (App)

=====

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
CAV ORDER

12-01-2017

5

This application under Section 482 of the Cr.P.C. has been filed by the petitioners for quashing the order dated 26.06.2013 passed by the Sessions Judge, Muzaffarpur in Criminal Revision No.125 of 2013 arising out of order dated 10.05.2013 passed by the learned Chief Judicial Magistrate , Muzaffarpur in P.S.Case No.535 of 2012, whereunder and whereby the I.O. had been directed to produce the victim girl before the court of the Chief Judicial Magistrate, Muzaffarpur.

The case in short is that informant-Opposite Party No.2 had lodged Ahiyapur P.S.Case No.535 of 2012 under Section



366/34 of IPC, stating *inter alia* that his daughter is missing, who had gone out of the house with her friend but later on it came to know that one Ranjeet Kumar used to call his daughter on cell phone. It is also the case of Opposite Party No.2, as per FIR that Ranjeet Kumar has enticed away the daughter with an intention for solemnizing marriage.

Later on the victim girl was recovered by the Police and O. P. No.2 was also arrested by the Police.

Thereafter the statement of the victim girl was recorded under Section 164 Cr.P.C. on 16.3.2013 and she was examined medically by the Medical Board and her age was assessed as 16-17 years..

Later on, the victim girl was produced before the learned Chief Judicial Magistrate, Muzaffarpur and on the statement of the victim girl, she was released to the petitioner.

It further appears that a petition has been filed on behalf of the victim girl that she is a major and as such she is independent to live according to her sweet-will and on that basis, the learned court below observing that the victim girl is



adult, directed the I.O. to produce her before the court below.

Against the aforesaid order dated 26.06.2013 the petitioner has moved before the Sessions Judge in Criminal revision No.125 of 2013 but the aforesaid revision petition was dismissed as not maintainable. Against which the present quashing has been filed by the petitioner.

It is submitted on behalf of the petitioner that once the court has allowed to release the victim girl to live on her own sweet-will in favour of father, vide order dated 20.3.2013 and she was released in favour of the petitioner, now directing the I.O. to produce the victim girl in the court will tantamount to reviewing the earlier order, which is not permissible under the provisions of the Code of Criminal Procedure. It is further submitted that finding of the learned Chief Judicial Magistrate holding the victim girl as adult is against the material available on the record and that was passed without hearing the parties. It is also submitted that the learned Sessions Judge has not decided the case on merit rather he has dismissed the revision application on the ground that as the order impugned is interlocutory in



nature as such the revision application is not maintainable.

Heard learned counsel for the O.P.No.2. It has been submitted on behalf of the O.P.No.2 that now the victim girl wants to live with O.P.No.2 on her own sweet- will, she has filed an application before the CJM and the learned Chief Judicial Magistrate has directed the I.O. to produce the girl in the court on next date and that does not amount to review the earlier order passed by the Chief Judicial Magistrate and earlier the victim girl had also married with the Opposite Party No.2 on her own sweet-will, as such there is nothing illegal in the order dated 26.06.2013 passed by the Chief Judicial Magistrate and even the Sessions Judge has dismissed the revision application stating that only notice has been issued to the I.O. for producing the victim girl in the court.

Having heard both sides and from perusal of the record, it appears that earlier the victim girl was released in favour of her father on her own sweet-will. It further appears from the order itself that at the time of releasing the girl earlier her statement was recorded under Section 164 Code of Criminal Procedure and her age was assessed as 18 years whereas the medical report



shows that the age of the victim girl had been assessed as 16-17 years but the learned Chief Judicial Magistrate in his order dated 10.5.2013 has recorded that the victim girl is adult without any enquiry or hearing the parties and directed the I.O. to produce the girl in the court.

So far finding of the Chief Judicial Magistrate regarding declaring the victim girl as major is concerned, it appears that the same has been recorded without hearing the parties or considering the materials available on the record or after any enquiry, which clearly appears to be an error apparent on the record. So far the contention of the petitioner that the impugned order directing the I.P. to produce the girl is concerned, to my opinion, it will not tantamount to order reviewing the earlier order as on the sweet-will of the victim girl was allowed to live with the petitioner and a petition had been filed by the victim girl herself and if she is major, she is free to reside anywhere.

In view of the aforesaid facts, it is proper to remit back the matter to the Chief Judicial Magistrate with observation that before deciding the issue of the custody of the girl, he should first hear the other parties and only after perusal of the



document available pass any order with regard to age of the petitioner and only thereafter the matter relating to custody of the girl be decided.

With the aforesaid observation, the impugned order is quashed and the matter is remitted back to the learned court below for considering afresh.

(Vinod Kumar Sinha, J)

chn/-

U			
---	--	--	--

