

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.11918 of 2014**

Arising Out of P.S.Case No. -317 Year- 2013 Thana -SARAIYA District- MUZAFFARPUR

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1. Indu Devi W/O Anant Rajak @ Anath Baitha
  2. Anant Rajak @ Anath Baitha S/O Late Kuldeep Baitha Both are resident of Village-Bhagwatpur, P.S.-Karja, District-Muzaffarpur
  3. Mahesh Baitha S/O Late Deo Narayan Baitha, resident of Village-Juneda, P.S. Motipur, District-Muzaffarpur

.... .... Petitioners

Versus

1. The State Of Bihar ,
2. Umesh Bhagat, son of Rajendra Bhagat, resident of village-Jalalpur, P.S. Saraiya, District-Muzaffarpur &
3. Rangoli Kumari, wife of Ajay Kumar Baitha, resident of village-Juneda, P.S.Motipur, District-Muzaffarpur.

.... .... Opposite Parties

with

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**Criminal Miscellaneous No. 19213 of 2015**

Arising Out of P.S.Case No. -317 Year- 2013 Thana -SARAIYA District- MUZAFFARPUR

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Ajay Baitha @ Ajay Kumar Baitha, son of Late Deo Narayan Baitha, resident of village-Juneda, Police Station-Motipur, District-Muzaffarpur.

.... .... Petitioner

Versus

1. The State of Bihar.
2. Umesh Bhagat, son of Rajendra Bhagat, resident of village-Jalalpur, Post Office-Karja, Police Station-Sarraiya, District-Muzaffarpur &
3. Rangoli, wife of Ajay Kumar Baitha, resident of village-Juneda, Post Office and police station-Motipur, District-Muzaffarpur.

.... .... Opposite Parties

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**Appearance :**

(In Cr.Misc. No.11918 of 2014)

For the Petitioners : Mr. Raj Shekhar, Advocate  
For the Opposite Party No.3 : Mr. Sanjay Kumar, Advocate.  
For the State : Mr. Humayu Ahmad Khan, APP

(In Cr.Misc. No.19213 of 2015)

For the Petitioners : Mr. Raj Shekhar, Advocate  
For the Opposite Party No.3 : Mr. Sanjay Kumar, Advocate  
For the State : Mr. Humayu Ahmad Khan, APP

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**CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR**

**ORAL JUDGMENT**

**Date: 24-07-2017**



Heard.

2. These criminal miscellaneous applications have been filed for quashing the order dated 16.01.2014 passed by SDJM (West), Muzaffarpur in Saraiya P.S.Case No.317 of 2013 whereby and whereunder the Magistrate took cognizance under Section 366A of the IPC against the petitioners.

3. It has been submitted that it was a case of love affairs. The petitioner Ajay Baitha @ Ajay Kumar Baitha (Cr.Misc.No.19213 of 2015) had affairs with the daughter of the informant who was a major girl. She voluntarily married with this petitioner Ajay Baitha @ Ajay Kumar Baitha. The petitioners of Cr.Misc.No.11918 of 2014 are distant relative of petitioner Ajay Baitha @ Ajay Kumar Baitha. The matter was investigated and the police submitted final form as mistake of fact. The victim was produced before Magistrate for recording the statement under Section 164 of the Cr.P.C. where she denied the allegation of abduction. She was produced before the Medical Board where her age was assessed between 19 to 20 years. It has further been submitted that the daughter of the informant has been released from Remand Home and presently she is with the petitioner Ajay Baitha @ Ajay Kumar Baitha. The court below took cognizance under Section 366A of the IPC without applying judicial mind and so the impugned order is fit to be quashed.

4. Learned counsel for the petitioners submits that the informant of this case has died. The daughter of the informant who was major had voluntarily married with the petitioner Ajay Baitha @ Ajay Kumar Baitha and so the order taking cognizance is fit to be quashed.

5. Perused the FIR as well as Annexure on record. The matter was investigated and police submitted final form as mistake of fact. In course of inquiry, it revealed that the daughter of the informant left her father's place



voluntarily and married with petitioner Ajay Baitha @ Ajay Kumar Baitha in a temple. The victim was produced before the Medical Board on 19.11.2013 and her age was assessed between 19 to 20 years. During her statement under Section 164 of the Cr.P.C. the daughter of the informant disclosed that her age is 19 years. The learned Magistrate who recorded her statement has also assessed her age as such. The learned Magistrate further considering her age has released her. As per submission of learned counsel for the victim, she is residing at Gujrat with her husband. The order of learned Magistrate as such is not sustainable.

6. In such circumstances, the order taking cognizance under Section 366A of the IPC and criminal prosecution of the petitioners would amount to abuse of the process of the Court.

7. In view of the aforesaid facts and circumstances, the order dated 16.01.2014 taking cognizance as well as criminal prosecution of all the petitioners is hereby quashed. The application is allowed.

**(Sanjay Kumar, J)**

B.Kr./-

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