

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.22291 of 2015**

Arising Out of PS. Case No.-132 Year-2010 Thana- SOHSARAI District- Nalanda

Nisha Nayak Dutt Sharma son of Chandra Muni Dutt Sharma, resident of
Sohdih, P.S.- Sohsarai, District- Nalanda.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Sanjay Kumar Pandey
For the Opposite Party/s : Mr.Rita Verma App

**CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT**

Date : 08-08-2019

Heard learned counsel for the parties.

2. The petitioner is informant of Sohsarai Police Station Case No.132 of 2010, registered for the offences under Sections 363 and 366A of the Indian Penal Code. The First Information Report relates to kidnapping of the minor daughter of the informant. After completion of investigation, charge sheet was submitted and in due course, the case was committed to the court of Sessions for trial and registered as Sessions Trial No.178 of 2012.

3. During trial, the petitioner filed a petition before the learned Sessions Judge, Nalanda at Bihar Sharif that offence under Section 376 of the Indian Penal Code be also added as charge against the accused, as charge is apparently made out. The



prayer was refused by the learned 1st Additional Sessions Judge, Nalanda at Bihar Sharif where the trial was pending, by the impugned order dated 09.04.2015.

4. When the victim girl appeared, she disclosed her age before the learned Magistrate while being examined under Section 164 of the Code of Criminal Procedure as 15 years and the learned Magistrate assessed her age as 17 years. He stated that she had love affairs with accused, *Aman Kumar* and she had voluntarily left her house with *Aman Kumar*. *Aman* had not abducted her. On the very next day of leaving the house i.e. on 18.11.2010, *Aman* married with her in Mahavir Temple at Patna and thereafter, both were residing as husband and wife. The doctor who examined the victim girl medically found her age between 17 and 18 years.

5. During trial, the victim was examined as prosecution witness No.1 and in that statement made on 30.05.2012, she disclosed her age as 17 years, whereas the learned trial judge also assessed her age as 19 years. Before the learned trial judge, she supported that she had voluntarily married with accused, *Aman* as she had love affairs with him.

6. While refusing the prayer to add of charge under Section 376 of the Indian Penal Code, the learned court below



considered the aforesaid material i.e. the statement of the victim recorded under Section 164 of the Code of Criminal Procedure and assessment of the age by the Medical Board etc.

7. Exception 2 to the definition under Section 375 of the Indian Penal Code says that sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

8. Apparently, the offence under Section 376 of the Indian Penal Code is not made out on the basis of material available on record. In the deposition as a prosecution witness No.1, the victim girl stated that she had voluntarily married with accused, *Aman* in the year, 2010 in Mahavir Temple at Patna and thereafter, she is residing along with *Aman* as husband and wife. She is mother of a son and a daughter from *Aman*. She further deposed that she had made statement under Section 164 of the Code of Criminal Procedure before the learned Magistrate and she identified her signature on the statement. Hence, the prayer of the petitioner has got no merit.

9. After statement of the victim girl that she was not kidnapped by anyone, criminal prosecution of the accused for the offences under Sections 363 and 366A of the Indian Penal Code are apparently abuse of process of the Court. If this fact has come



to the notice of the Court, the Court cannot remain silent spectator to allow continuance of the abuse of process of the Court. Moreover, the continuance of criminal proceeding would only create discord and disharmony in the matrimonial life of the victim which should not be allowed.

10. Hence, the entire criminal prosecution arising out of Sohsarai Police Station Case No.132 of 2010, corresponding to Sessions Trial No.178 of 2012, hereby, stands *quashed*.

(Birendra Kumar, J)

abhishek/-

AFR/NAFR	NAFR
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