

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.10588 of 2015

Arising Out of PS. Case No.-177 Year-2012 Thana- SAHEBGANJ District- Muzaffarpur

1. SUDHIR KUMAR@SUDHIR KUMAR RAI and ANR Son of Late Bhagya Narain Ray resident of village Rampur Chowk, P.S. Sahebganj, District - Muzaffarpur.
2. Meena Devi Wife of Late Bhagya Narain Rai resident of village Rampur Chowk, P.S. Sahebganj, District - Muzaffarpur.

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Shaimul Khatoon wife of Late Mansoor Khan resident of village Somagrh, P.O. Kurnozol, P.S. Sahebganj, District Muzaffarpur.
3. Nisha Bharti @ Nisha Khatoon daughter of Late Mansoor Khan wife of Sudhir Kumar @ Sudhir Kumar Rai, Muzaffarpur
4. Bihar School Examination Board, Patna Branch its Secretary, BSEB, Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Suraj Narain YadavUpendra Kumar Chaubey
For the Opposite Party/s	:	Mr.Parmanand Prasad App
For the Opposite party	:	Mr. Naresh Kumar Mehta

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

6 14-05-2019 The Opposite party No.2 had got registered an FIR with Sahebganj Police Station alleging that her daughter, Opposite No.3 was missing and suspected that petitioner No.1 might have kidnapped her for marriage, with the help of petitioner No.2, Petitioner No.2 is mother of petitioner No.1.

2. This application has been filed under Section 482 of the Code of Criminal Procedure(hereinafter referred to as the Code), for quashing of the entire prosecution.

3. Significantly, the affidavit of this application has



been sworn by opposite party No.3, the alleged victim. The date of occurrence is said to be 01.09.2012 and the date of birth of Opposite party No.3 as recorded in the certificate issued by the Bihar School Examination Board is 26.04. 1994, which is not at all in dispute. Evidently, thus alleged victim was more than 18 years of age as on the date of occurrence.

4. The petitioners are seeking quashing of the entire prosecution mainly on the ground that the allegation of kidnapping is manifestly incorrect and that the victim had gone with the petitioner no.1 voluntarily for marriage and they are married, leading a peaceful conjugal life. They are said to have blessed with children out of the said wedlock. It is an inter-religion marriage.

5. It is significant to note that Opposite party No.3, the alleged victim, had herself approached this Court in the year 2013 by filing a Criminal Writ Application No. 273 of 2013, seeking quashing of the First Information Report. She, had apprehended some threat to her life also at the instance of her family members. The said writ application was disposed of by an order dated 19.07.2013, whereby the Opposite party No.3 (the victim) was directed to cooperate with the investigating agency and in that course, appear, before the Superintendent of



Police, Muzaffarpur. The Superintendent of Police, Muzaffarpur and the Officer Incharge of the Sahebganj were directed to provide necessary protection to Opposite party No.3, so long as would require. After order of this Court dated 19.07.2013, was passed, the statement of Opposite party No.3 was recorded under Section 164 of the Code on 09.04.2014. In her statement, she clearly deposed that she had accompanied petitioner No.1 and had gone to Muzaffarpur voluntarily and she was not kidnapped by any one. Her age was assessed by the Court recording statement as 19 years. Despite the statement of the victim herself recorded under Section 164 of the Code, the police submitted charge-sheet on 27.07.2014. Learned Court of Sub Divisional Magistrate (West), Muzaffarpur vide order dated 03.09.2014 after taking cognizance based on the police report has summoned the petitioners in the criminal case, which is under challenge in the present application.

6. Case diary was called for in this case, which is available.

7. I have perused the case diary. There is absolutely no material in the case diary which can indicate that the victim was a minor as on the date of occurrence, except for the statement of the informant in the First Information Report that



she was a minor. Peculiarly, the Investigating Officer has noted the statement of the victim recorded under Section 164 of the Code. There is no element of any inducement, force or sedation, which are essential ingredients to constitute an offence under Sectionh 366A of the Indian Penal Code, in the materials collected in course of investigation by the police as available in the case diary. There is nothing in the case diary which goes to suggest that the victim was kidnapped with the intent that she would be compelled to marry any person, 'against her will'. The evidence collected in course of investigation is rather otherwise. I am unable to notice the circumstance in which, despite no material available, the police submitted charge-sheet against the persons named in the First Information Report and the learned Court too, without going through the police report, after taking cognizance, summoned the accused persons.

8. It is noteworthy that the Opposite party No.3 has also appeared and has filed an affidavit in this case stating that she had left her parental house of her own volition on the alleged date of occurrence, for marrying petitioner No.1 and nothing happened against her will.

9. In view of the facts as noted above, in my view, allowing criminal prosecution against the petitioner to continu



would be an abuse of the process of the Court.

10. Therefore, in order to secure the ends of justice, the order taking cognizance dated 03.09.2014 needs interference and is accordingly quashed. Resultantly, entire prosecution arising out of Sahebganj P.S. Case No. 177 of 2012, G.R. No. 1798 of 2012 and corresponding to Tr. R. No 3062 of 2015, pending in the Court of learned Sub-Divisional Judicial Magistrate, West, Muzaffarpur is, hereby, quashed in the interest of justice.

11. This application is, accordingly, allowed.

(Chakradhari Sharan Singh, J)

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