

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1689 of 2017

Arising Out of PS. Case No.-23 Year-2017 Thana- KALUAHI District- Madhubani

Rakesh Kumar Yadav son of Sri Bramhdeo Yadav, resident at village-
Biratpur, P.S.- Basopatti, District- Madhubani.

... .. Petitioner

Versus

1. The State of Bihar through Superintendent of Police, Madhubani.
2. Ram Suresh Yadav son of Birju Yadav
3. Chandradeep Yadav son of Ram Suresh Yadav
4. Manish Yadav son of Ram Suresh Yadav
5. Barun Yadav son of Bachan Yadav

Respondent nos 2 to 5 are resident of village-Sirahi, P.S.- Basopatti,
District- Madhubani.

6. Ramdeo Yadav son of Biraju Yadav
7. Indrajeet Yadav son of Ramdeo Yadav

Both respondent nos. 6 and 7 are resident of village- Biratnagar, P.S.
Basopatti, District- Madhubani.

(respondent nos. 2 to 7 are accused persons)

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Vishwanath Prasad Sinha, Sr. Advocate Mr. Sanjay Kumar Singh, Advocate
For the State	:	Mr. Ajay Kumar, AC to GP-4
For the Res. No. 2 to 5	:	Mr. Saroj Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 22-01-2019

Heard Mr. Vishwanath Prasad Sinha, learned senior
counsel appearing for the petitioner, Mr. Ajay Kumar, learned
counsel for the State and Mr. Saroj Kumar, learned counsel for
respondent nos. 2 to 5.

2. This writ petition has been filed by the
petitioner for quashing the order dated 28.03.2017 passed by the
learned Judicial Magistrate-1st Class, Madhubani in Kaluahahi P.



S. Case No. 23 of 2017 by which he has ordered the victim girl to be released with liberty to go wherever she wants to go. The petitioner has also prayed for quashing the order dated 02.06.2017 passed by the learned Judicial Magistrate-1st Class, Madhubani in the aforestated case by which he has rejected the application filed by the petitioner for recalling the order dated 28.03.2017. The petitioner has further prayed for quashing the order dated 03.08.2017 passed by the learned Session Judge, Madhubani in Cr. Revision No. 530 of 2017 by which he has dismissed the revision petition filed by the petitioner against the order dated 02.06.2017 passed by the learned Judicial Magistrate-1st Class, Madhubani in Kaluahi P. S. Case No. 23 of 2017.

3. Mr. Vishwanath Prasad Sinha, learned senior counsel appearing for the petitioner submitted that the courts below have not applied their mind and illegally assessed the age of the victim as 18 years. At the time of hearing, several certificates were produced in order to show that the victim is a minor, but those documentary evidences were not appreciated. He contended that the revisional court also erred in rejecting the revision petition. It has simply confirmed the illegal order dated 28.03.2017 while rejecting the revision application.



4. *Per contra*, learned counsel appearing for the State submitted that the writ petition is misconceived. The petitioner never challenged the order dated 28.03.2017 passed by the learned Magistrate before the revisional court or before this Court. As a matter of fact, the petitioner went in revision against the order dated 02.06.2017, which was rightly rejected by the revisional court, as the same lacks any merit. The order dated 28.03.2017 passed by the learned Magistrate is a final order as far as the release of the victim is concerned, and, thus, in case, the petitioner was aggrieved by the said order, he could have filed a revision application either before the court below or before this Court. But a judicial order passed by the court of Magistrate cannot be directly challenged before this Court in writ jurisdiction and that too after lapse of nearly six months.

5. Learned counsel appearing for respondent nos. 2 to 5 has adopted the submissions made by the learned counsel for the State.

6. I have heard learned counsel for the parties and carefully perused the record.

7. Kaluahi P. S. Case No. 23 of 2017 was registered under Sections 366A and 120B read with 34 of the Indian Penal Code against six accused persons on the basis of



written report submitted by the petitioner for kidnapping of his minor sister. In course of investigation, the victim was recovered and her statement was recorded under Section 164 of the Code of Criminal Procedure. After assessing the age of the victim as 18 years, the learned Magistrate allowed her to go to any place according to her choice, vide order dated 28.03.2017. Thereafter, on 24.04.2017, the petitioner filed a petition before the court of Magistrate with a prayer for handing over victim in his favour. On 02.06.2017, the learned Magistrate rejected the aforestated petition dated 24.04.2017 of the petitioner. He has recorded in his order that vide order dated 28.03.2017 the victim was allowed to go to the place of her choice, hence, the application cannot be allowed, as the same would amount to revising one's own order which is not permissible in law. The said order dated 02.06.2017 was challenged by the petitioner in revision before the court of Session, vide Cr. Revision No. 530 of 2017. The revisional court also opined that once the learned Magistrate had passed the order and directed the victim to go to the place of her choice vide order dated 28.03.2017, he had no jurisdiction to revise or review the said order and, thus, no illegality was committed in passing the order dated 03.08.2017. Assailing the order dated 03.08.2017, the instant writ petition



has been filed by the petitioner on 13.09.2017.

8. Apparently, the petitioner never challenged the order dated 28.03.2017 passed by the learned Magistrate whereby the victim was set at liberty and was allowed to go to the place of her choice. The subsequent application of the petitioner dated 24.04.2017 was nothing but an application for revising the order dated 02.06.2017.

9. It is well-settled position in law that a criminal court after passing the final order and signing the same is prohibited from altering or revising it except for the purpose of correction of clerical or arithmetical error. In view of Section 362 of the Code of Criminal Procedure as soon as the judgement or final order disposing of a case is signed by the court, it becomes final and the court becomes *functus officio*.

10. In that view of the matter, the learned Magistrate committed no error in rejecting the subsequent application of the petitioner dated 03.04.2017, vide order dated 02.06.2017. Since there is no illegality in the order of the learned Magistrate, the revisional court rightly dismissed the revision application filed by the petitioner, vide order dated 03.08.2017. As there is no illegality, irregularity or impropriety in the revisional order, I see no reason to interfere either with



the order of the learned Magistrate or the order passed by the revisional court.

11. As far as the order dated 28.03.2017 is concerned, the petitioner has not availed of the statutory remedy available to him under the Code of Criminal Procedure. Hence, I am not inclined to entertain the prayer of the petitioner for setting aside the judicial order dated 28.03.2017 in exercise of extra-ordinary writ jurisdiction.

12. Accordingly, the writ petition is dismissed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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