

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.35590 of 2016

Arising Out of PS. Case No.-770 Year-2014 Thana- SHASTRINAGAR District- Patna

Bittu Kumar son of Ramadhar Prasad, Permanent village- Maula P.S. Manner, District- Patna present address- Durga Ashram Gali, Shekhpora, P.S.- Shastri Nagar, District- Nalanda.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Pooja Kumar wife of Bittu Kumar D/O Dilip Kumar Jha aged about 19 years of permanent village- Maula, P.S. Manner, District- Patna
3. Dilip Kumar Jha Son of Ram Lakhan Jha Resident of VillagePost- Rampur Sinday, P.S. Barbigha, Distt. Sheikhpura, At Present Shekhpora, Durga Asthan Gali, Near A.K. Sinla House, P.S. Shashtri nagar, Distt Panta.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Madan Mohan Prasad, Advocate
For the State	:	Mr. Ram Priya Saran Singh, Advocate
For OP No.2	:	Mr. Ravi Ravi Shankar Pandey, Advocate.
For OP No. 3	:	None.

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL ORDER

8 17-10-2023 The present petition under Section 482 CrPC has been preferred against order dated 01.10.2015 passed by Smt. Indrani Kisku, Ld. Judicial Magistrate 1st Class, Patna in Shashtri Nagar PS Case No. 770/2014 (GR No. 7562/2015) whereby Ld. Judicial Magistrate has taken cognizance of offence punishable under Section 366(A) of the Indian Penal Code against the petitioner.

2. The relevant facts as emerging from the record are that an FIR bearing Shashtri Nagar PS Case No. 770/2014 was registered against the petitioner and his father, Ramadhar



Prasad, for offence punishable under Section 366(A) of the IPC alleging that the petitioner and his co-accused father have kidnapped the minor daughter of the informant with wrong intent. During course of investigation, the statement of alleged victim, Pooja Kumari was recorded by the Ld. Magistrate under Section 164 of CrPC on 04.03.2015, under which she has clearly stated that she is aged about 18 years and she was in love with the accused/petitioner, Bittu Kumar. Later on, she married the accused/petitioner on 03.12.2014 in a Sun Temple, Mustafapur, Bihta and thereafter, she went to Ludhiana along with her husband. Later, she came to know that her father has lodged a criminal case against her husband and his father. Then she came to Shashtri Nagar Police Station. Thereafter, she was taken by her parents to her parental home with an undertaking by the parents that they would keep their daughter well and would not subject her to any assault, but at her home, she was assaulted by her father and even her head hair was cut and on 20/12/2014, she was ousted by her father from his house. Thereafter, she called her husband on telephone who came from Ludhiana and since then she has been living with her husband at Patna and she wants to live with her husband.

3. However, after investigation, the police filed



charge-sheet bearing no. 144/2015 dated 30.06.2015 against the petitioner/husband exonerating the other co-accused. Thereafter, Ld. Magistrate took cognizance by the impugned order dated 01.10.2015 under Section 366(A) of the IPC against the petitioner.

4. Being aggrieved by the order of cognizance, the petitioner has preferred the present petition.

5. Heard Ld. Counsel for the petitioner, Ld. APP for the State and Ld. Counsel for OP. No.2 who is alleged victim/wife. However, nobody appears on behalf of OP No. 3, Dilip Kumar Jha, who is father of the alleged victim despite valid service of notice served upon him.

6. Learned counsel for the petitioner and OP No.2 submit that the present case is an example of persecution and not prosecution. As per material on record, no offence is made out under Section 366(A) IPC, because as per statement of the alleged victim under Section 164 CrPC, she was 18 year of age and even as per the medical board, the age of the alleged victim has been determined between 18 to 19 years. However, the police, without application of legal mind, has filed this malicious charge-sheet resulting into harassment of the petitioner and disturbing the married life of the couple. This



prosecution is no way justified in the eyes of law.

7. Ld. APP for the State also fairly submits that as per material on record, particularly in view of the age of the alleged victim and her statement as recorded under Section 164 CrPC, no offence under IPC or any penal law is made out and this charge-sheet is a prosecution without any legal justification. The whole criminal proceeding arising out of the same is liable to be quashed.

8. Nobody appears on behalf of OP No. 3 despite service of notice.

9. Considered the submissions made on behalf of the parties and perused the material on record. I find that the alleged victim girl, Pooja Kumari, in her statement as recorded under Section 164 CrPC has clearly stated that she is 18 year of age. Her statement is also corroborated by the opinion of the medical board regarding her age because as per the assessment by medical board, she has been found to be 18 to 19 year old. As such, she is major on the alleged date of occurrence. Moreover, as per statement as recorded under Section 164 CrPC, she has clearly stated that she was in love with the accused/petitioner and she had voluntarily married him and living with him happily and at present she is blessed with two children out of the said



wedlock. As such, I find that there is no offence made out as per material on record after investigation and the police has filed the charge-sheet without applying legal mind causing disturbance to the legally married life of the petitioner and his wife. It is really persecution and not prosecution.

10. It is very shocking and disturbing to see such prosecution by the police. Even the Judicial Magistrate has failed in her duty to reject the charge-sheet. She has passed mechanical order taking cognizance under Section 366(A) IPC. The impugned order is no way sustainable in the eyes of law.

11. Hence the order dated 01.10.2015 passed by Smt. Indrani Kisku, Ld. Judicial Magistrate 1st Class, Patna in Shashtri Nagar PS Case No. 770/2014 (GR No. 7562/2015) is set aside and the criminal proceeding arising out of the same is quashed.

(Jitendra Kumar, J)

perwez

U		T	
---	--	---	--

AFR

