

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.37458 of 2015

Arising Out of PS. Case No.-69 Year-2006 Thana- MAGADH MEDICAL COLLEGE
District- Gaya

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Rinku Singh @ Sushil Kumar Singh S/o Kamta Pd. Singh R/o Vill. - Kaler,
P.S. - Magadh Medical College, District - Gaya.

... .. Petitioner/s

Versus

1. The State Of Bihar Bihar
2. Om Prakash Singh Son of Late Jagdeo Singh Resident of Village- Kaler,
Police Station- Magadh Medical College, District- Gaya

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Ranvijay Narain Singh

For the Opposite Party/s : Mr.Binod Kumar

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL ORDER

3 03-08-2023 Heard learned counsel for petitioner and learned

Additional Public Prosecutor. None appears for the Opposite

Party No. 2 despite service of notice.

2. This application is filed for quashing the order
dated 28.04.2015 passed by the learned A.C.J.M., Gaya in
connection with M.M.C.H. Case No. 69/06, Tr. No. 61/15
wherein and whereby the learned Magistrate has taken
cognizance for the offence under Section 365 and 368 of Indian
Penal Code

3. As per the prosecution story the petitioner is said to
have enticed the informants' wife having three children.

4. It is further submitted by the learned counsel for the



petitioner that on the basis of the F.I.R. of the informant, the wife of the informant was recovered from her parental village.

5. It is next submitted by the learned counsel for the petitioner that the police produced Hemawati Devi for recording her statement under Section 164 of Cr.P.C. on 19.09.2006 before learned J.M. Gaya. She made a categorical statement under section 164 Cr.P.C. stating that she has Suo-moto gone to her parental home for the reason that she was being tortured and assaulted by her husband who was much older than her and the petitioner has committed no mistake and has not kidnapped her.

6. Thereafter the cognizance was taken on 12.10.2007 which was challenged in this Court in Cr.Misc. No. 52204 of 2007 which was disposed of on 04.02.2009. Following was the directed of this Court.

In the result, while allowing the application and quashing the impugned order, the matter is remitted back to the Court concerned for passing orders afresh in respect of taking cognizance by assigning reasons as to why more reliance was placed on the supervision notes and the statement of the victim girl under Section 164 Cr.P.C. was ignored.

7. After remand again cognizance has been taken by the learned Magistrate without considering the statement of the alleged victim under Section 164 Cr.P.C. in which she has stated that she had left the house on her own free-will and no offence



was committed by the petitioner.

8. The cognizance order cannot be passed in a mechanical manner without considering the materials on records and in the present case the alleged victim has said that she has left the house on her own free-will there was no material available on record for taking cognizance. In the result, this application is allowed.

9. Accordingly, the order dated 28.04.2015 passed by the learned A.C.J.M., Gaya in connection with M.M.C.H. Case No. 69/06, Tr. No. 61/15 is hereby quashed.

(Sandeep Kumar, J)

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