

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.354 of 2017

Arising Out of PS. Case No.-2282 Year-2016 Thana- EAST CHAMPARAN COMPLAINT
District- East Champaran

Rajkali Devi Wife of Late Ramayan Thakur, Resident of Village- Manikpur,
P.S.- Harsidhi, District- East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Ragdu Prasad, Son of Mural Mahto, Resident of Village- Manikpur, P.S.
Harsidhi, District- East Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Rajesh Ranjan, Adv.

For the Respondent/s : Mr. Jagdhar Prasad, APP.

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 29-03-2023

Heard learned counsel for the petitioner and
learned A.P.P. for the State.

The present Cr. Revision Application has been
filed against the order dated 13.02.2017 passed in Complaint
Case No. 2282 of 2016 (Enq. No. 19 of 2016) by Judicial
Magistrate, IInd Class, Motihari, East Champaran, by which,
the Judicial Magistrate had dismissed the complaint filed by
the petitioner under Section 203 of Cr.P.C.

Learned counsel for the petitioner submits that
the order under challenge suffered with illegality and is
basically an incorrect order due to two reasons. The first

reason he has contended that complaint case of petitioner was filed under the ingredients of Sections 363, 363A & 364 of the Indian Penal Code. It is very clear that all the three sections are triable by either Judicial Magistrate, Ist Class or by the Court of Session Judge and punishment is more than two years. Counsel submits that in such sections, the Judicial Magistrate, IInd Class has no power to pass order on cognizance.

So far as other contention is concerned, counsel submits that from the contents of cognizance order, it transpires that every ingredient was there but only proof of age was not provided by counsel for the petitioner, it is due to this reason cognizance was not taken. He further submits that in the S.A. and inquiry witness it has come through the complainant that his alleged kidnapped child is minor, therefore, it is wrong to analyze that child was not minor at least for the purpose of looking into the prima facie case.

Learned counsel for the State submits that it is true that Judicial Magistrate, IInd Class has no power to take cognizance in such type of case in which punishment is more than two years. He also submits that for considering prima facie case, there is no need of evidence.

This Court is of the opinion that the order dated 13.02.2017 passed in Complaint Case No. 2282 of 2016 (Enq. No. 19 of 2016) by Judicial Magistrate, IInd Class, Motihari, East Champaran suffers from jurisdictional error and the court has exhausted its power not vested in him/her, because Section 190(2) of Cr.P.C., 1973 states as follows:-

190(2). The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

In the present case, the offences as are not within his competence to inquire into or try.

In this view of the matter alone, the order dated 13.02.2017 passed in Complaint Case No. 2282 of 2016 (Enq. No. 19 of 2016) by Judicial Magistrate, IInd Class, Motihari, East Champaran is hereby set-aside.

The Court of District & Sessions Judge, Motihari, East Champaran is directed to place this case before a Magistrate having jurisdiction to pass order of cognizance in such type of cases within four weeks from the date of receiving of the order passed today before him/her.

With this direction, the present Cr. Revision
Application stands allowed.

(Dr. Anshuman, J.)

Ritik/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	