

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.641 of 2023**

Arising Out of PS. Case No.-18 Year-2022 Thana- MUNGER MUFFASIL District- Munger

UTTAM KUMAR @ UTTAM S/O UDAY SHARMA R/O VILLAGE- MAI
DARIYAPUR, P.S- MUFFASIL, DISTT.- MUNGER.

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Pankaj Kumar Sinha, Adv., Mr. Raunak Kumar Singh Pankaj, Adv.
For the State	:	Mr.Md. Mushtaque Alam, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL JUDGMENT

Date : 09-04-2024

Heard learned Advocate for the petitioner as well as
learned APP for the State.

2. The instant revision is directed against an order dated
15th June, 2023, passed by the learned Additional Sessions Judge-I,
Munger, in Sessions Case No. 98 of 2023, rejecting an application
filed by the accused/petitioner under Section 227 of the Cr.P.C.
praying for discharge.

3. It is pertinent to mention at the outset that on the basis
of a written complaint submitted by one Bhim Yadav, Police
registered Mufassil P.S. Case No. 18 of 2022, under Sections
363/365/366A of the I.P.C.



4. The allegation made out in the written complaint is that on 15th January, 2022 at about 11:00 A.M. the minor daughter of the defacto complainant was kidnapped by one Md. Sonu, Md. Saheb, Sabra Khatoon, Md. Naushad, Md. Samshad and Md. Sahwaaj, all residence of Sikandarpur within the District of Munger. He suspected that the above named petitioners might committed some illicit act upon the victim and murder of her.

5. After registration of case, Police submitted charge-sheet against the F.I.R. named accused persons. After filing Charge-sheet Police filed supplementary Charge-sheet against the present petitioner.

6. It is submitted by the learned Advocate for the petitioner that the trial court while rejecting the application filed by the present petitioner failed to consider that the petitioner was not involved in kidnapping of the minor girl of the complainant. From the statement of the F.I.R. recorded under Section 164 of the Cr.P.C., it is ascertained that the victim was produced before the local Police Station by one Md. Nausad and Uttam Kumar @ Uttam after two days of the occurrence. Therefore, Uttam's involvement in alleged kidnapping of the minor girl has not been even prima facie established. Uttam Kumar produced the minor girl after her recovery to the local Police Station. Thus, he cannot



be dragged in a prosecution under Section 363/365/366A of the I.P.C.

7. Learned Advocate for the petitioner next submits that the petitioner was forwarded to face trial on the basis of a supplementary charge-sheet. The Investigating Officer did not collect any further evidence against the petitioner to frame supplementary charge-sheet against him. Supplementary charge-sheet cannot be filed on the basis of the evidence or material collected by the Police at the time of original investigation. Without some new material being collected by the Investigating Officer, no supplementary charge-sheet can be entertained.

8. In support of his contention, the learned Advocate for the petitioner first refers to a decision of the Hon'ble Division Bench of this Court in ***Yamuna Pathak Vrs. The State of Bihar & Anr.***, reported in ***1994 (2) PLJR 96***. In the said report the petitioner was brought on the basis of a supplementary charge-sheet to face trial. The petitioner challenged his implication in criminal case by filing a writ petition. It was held by the Division Bench of this Court that supplementary charge-sheet submitted by the Police, on the basis of material already collected after a petition filed by local M.L.A. for reconsideration of evidence. Submission of supplementary charge-sheet, not on the basis of



fresh evidence, but only on reconsideration of evidence already collected at the time of earlier submission of charge-sheet, is not contemplated under Section 173(8) and, therefore, order of taking cognizance cannot be sustained on the basis of the said supplementary charge-sheet and is liable to be quashed.

9. On the same point, the learned counsel for the petitioner also refers to another decision of this Court in ***Resham Lal Yadav & Ors. Vrs. State of Bihar***, reported in ***1981 BLJR 647***. In this case also it was held by a Single Bench of this Court that the order of taking cognizance, on the basis of supplementary affidavit, without any further investigation, is liable to be set aside because supplementary charge-sheet can only be filed on the basis of fresh evidence collected by the Investigating Officer after filing of the charge-sheet against some accused.

10. I am in conformity with the learned Advocate for the petitioner that the name of the present petitioner was not stated by the informant in the complaint. On the basis of which Mufassil P.S. Case No. 18 of 2022, dated 17th January, 2022, under Sections 363/365/366A of the I.P.C. was registered.

11. However, during investigation statement of the victim was recorded under Section 164 of the Cr.P.C. In her statement it is stated by the victim girl that on 15th January, 2022 at



about 10:00/11:00 A.M. she was going to the Gramin Bank of her village. When she reached by the side of a garden, the accused persons namely Mukhtaz, Saitaz, Sonu, Nausad and Uttam (present petitioner) came to her riding on two Motorcycles. They forcibly took her on their Motorcycles and snatched away the Bank Passbook, Aadhar Card etc. She raised hue and cry, but the miscreants pressed her mouth and drove away from the place at a high speed. Thereafter, the miscreants confined her in a room for two days. Subsequently, Naushad and Uttam Kumar took her to Jamui Police Station and handed her over to Police. She also stated that the said miscreants did not did any illicit relation with her.

12. Therefore, from the statement of the victim recorded under Section 164 of the Cr.P.C., it is ascertained that the petitioner were very much involved from very inception of offence. Failure on the part of the informant to mention the name of the petitioner is not fatal for the prosecution because a statement under section 154 of the Cr.P.C. is not a substantive piece of evidence, it can only be considered during trial for corroboration or contradiction of the statement of maker, which he would make before the court during trial. Thus, the relevancy of a F.I.R. only relates in connection with Sections 145 and 157 of the Indian Evidence Act.



13. On the contrary, in her statement, the victim girl stated under section 164 of the Cr.P.C. that Uttam was very much present when she was kidnapped by the miscreants by two Motorcycles.

14. Section 361 of the I.P.C. defines kidnapping from lawful guardianship:-

“361. Whoever takes or entices any minor under 1[sixteen] years of age if a male, or under 2[eighteen] years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.”

15. Thus, the ingredient of Section 361 is that:-

(i) The accused takes or entices a person, if female, under the age of 18 years.

(ii) Such taking must be without the consent of the lawful guardian of the such minor.

If the above mentioned two ingredients are fulfilled the offence of kidnapping under Section 363 of the I.P.C. is prima facie said to be established.



16. In the instant case, the statement of the victim girl under Section 164 of the Cr.P.C., which is accepted as a piece of evidence, reveals that the petitioner was one of the associates with other accused persons to take the victim girl away from the keeping of her lawful guardianship. It is also found from the materials on record that she was confined in a room for two days. This material prima facie attracts the offence under Section 365 of the I.P.C.

17. There is no dispute on the legal points laid down by the Division Bench as well as a Coordinate Bench of this Court in the reported decisions as stated above that a supplementary affidavit cannot be filed on the basis of the evidence already collected by the Police authority, on the basis of which he filed initial charge-sheet against all the accused persons except Uttam Kumar.

18. The Investigating Officer did not collect any fresh evidence against Uttam Kumar. Sub-section 8 of Section 173 is applicable when upon further investigation the Officer-in-charge of the Police Station obtain further evidence, oral or documentary. Only then he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of Sub-sections (2) to (6) shall, as far as may be, apply



in relation to such report or reports as they apply in relation to report forwarded under sub-section 2, meaning thereby, on collection of fresh evidence, a person who has not been sent up by the Police to face trial may be brought to face fresh trial on the basis of the supplementary charge-sheet.

19. In the instant case, it is contended on behalf of the petitioner that Police did not collect any fresh evidence against the petitioner and on the basis of the same evidence submitted charge-sheet against the accused. On the basis of the said supplementary charge-sheet, the Magistrate cannot take cognizance and the cognizance of offence itself is bad and if the cognizance is bad, subsequent proceedings are also held to be illegal.

20. The case diary in respect of the original investigation and the supplementary investigation are not before this Court.

21. On perusal of the impugned order, I do not find any discussion as to whether case diary was perused by the trial court or not at the time of consideration of charge-sheet.

22. In view of such circumstances, the impugned order dated 15th June, 2023 is set aside.

23. The trial court is directed to reconsider the petition under Section 227 of the Cr.P.C. filed by the petitioner in the light of the materials in the original case diary and the supplementary



case diary and if it is found that some fresh evidence was collected against the petitioner, he will pass the order of framing charge against the accused.

24. If, on the other hand, there is no material in the supplementary charge-sheet in the form of fresh evidence, such supplementary charge-sheet cannot be the basis for taking cognizance against the petitioner and in that case the petitioner shall be discharged.

25. With the above order, the instant revision is disposed of.

(Bibek Chaudhuri, J)

pravinkumar/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	
Transmission Date	

