

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.17472 of 2023

Arising Out of PS. Case No.-74 Year-2015 Thana- KANKARBAG District- Patna

-
1. Murari Thakur @ Murari Kumar Thakur, Son of Sri Manoj Thakur
 2. Gopal Thakur, son of Sri Manoj Thakur,
Both are resident of Village-Ratanpur, P.S.-Kamtaul, District-Darbhanga.
 3. Nitesh Kumar @ Amit Kumar, son of Sri Shashi Bhushan Thakur ,
resident of village-Patsara, P.S.- Piar, Dist- Muzaffarpur

... .. Petitioners

Versus

1. The State of Bihar
2. Moni Devi, Wife of Manoj Chaudhary, resident of village-Bhawanipur
Rajdham, P.S.- Bhawanipur Rajdham, Dist- Purnia.

... .. Opposite Parties

Appearance :

For the Petitioners	:	Ms. Jyoti Singh, Advocate
		Mr. Arvind Kumar, Advocate
For the State	:	Dr. Mrityunjaya Kr. Gautam, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 15-07-2025

Heard Ms. Jyoti, learned counsel appearing for the
petitioners and Dr. Mrityunjaya Kumar Gautam, learned APP
appearing for the State.

2. The present application has been filed by the
petitioners for quashing of the order dated 04.03.2020
passed by the learned Judicial Magistrate-2nd Class, Patna in



connection with Kankarbagh P.S. Case No.74 of 2015, whereby the learned jurisdictional Magistrate has taken cognizance for the offence punishable under Section 364-A read with 34 of the Indian Penal Code (in short 'IPC') against the petitioners and also to set aside order dated 28.09.2022 passed by learned Additional Sessions Judge-XVI, Patna in Cr. Revision No.87 of 2021, by which the revision application filed by the petitioner against the order of cognizance dated 04.03.2020 was rejected.

3. The case of prosecution is based on the written information of the informant namely, Moni Devi, alleging *inter alia* that while she was in the clinic of Dr. R.N. Singh along with his brother, namely, Krishna Choudhary (victim) for the treatment of her husband Manoj Choudhary on 01.02.2025, at around 2.00 PM, some persons came there and took away her brother, namely, Krishna Choudhary, alongwith his Sumo Gold vehicle bearing Registration No.BR 11 M/9097.

4. On the basis of aforesaid written report, Kankarbagh P.S. Case No.74 of 2015 dated 01.02.2015 under Sections 363 and 365 of the IPC was lodged against



unknown persons.

5. The police after investigation, submitted charge-sheet against the petitioners before the court of learned Judicial Magistrate-2nd Class, Patna. The learned Jurisdictional Magistrate after perusing the charge-sheet and case diary, took cognizance against the petitioners and other accused persons for the offence punishable under Section 364-A/34 of the IPC on 24.03.2020.

6. Ms. Jyoti Singh, learned counsel appearing for the petitioners submitted that the FIR was registered against unknown persons. The name of petitioners transpired during course of investigation. It is submitted that after recovery by the police, the statement of the victim was recorded under Section 164 of the CrPC, in which he has made general and omnibus allegation against the petitioners. He further stated that he has been kidnapped on the point of gun. At first day, they have kept the victim at the house of Gopal Thakur at Muzaffarpur and thereafter, they have kept the victim in lodge at Muzaffapur. Thereafter, they again kept the victim at the house of Gopal Thakur. After lapse of half an hour, they have



left the victim from Bolero at Ghurhan Chapra. Thereafter, the Officer-in-charge has recovered him from Gaighat. He has taken the name of Sanjeet Rai, Gopal Thakur, Morari Thakur (Petitioner), Nitesh Kumar and Kaka @ Mithilesh etc. It is submitted by learned counsel for the petitioners that the victim had taken Rs. 31 lakhs through cash/bank transaction as a loan in good faith from petitioner no.1, namely, Gopal Thakur as well as from the brother of petitioner no.1 and on demand of the same, the victim in connivance with his sister falsely implicated the petitioners along with other family members.

7. It is further submitted that the petitioner no.1 had filed an informatory petition on 31.01.2015 before the S.D.J.M., East, Muzaffarpur regarding payment of Rs. 31 lacs from victim Krishna Nand Chaudhary. On 14.01.2015, a panchayati was convened in which the victim agreed to pay Rs.28 lakhs on 30.01.2015 and on next day i.e. 31.01.2015, with a view to harass the petitioners and their family members, the present FIR was lodged. It is further submitted that petitioner no.2 had also filed a Money Suit No.38 of 2015



against the victim Krishnanand Chaudhary. It is further pointed out that the petitioner are not involved in the kidnapping of the victim. They have also no concern with the owner of the suspicious mobile no.7070236712. It is also submitted that in order to grab the money, the victim in connivance with his sister (informant) has falsely implicated the petitioners with present case. It is further submitted that even if the allegations made in the FIR are being accepted at their face value and in their entirety, same not *prima facie* constitute any offence or make out any cognizable offence against the petitioners. It is submitted that the learned Magistrate has taken cognizance against the petitioners without application of judicial mind as both victim after recovery failed to make any statement in their statements recorded u/s 164 of CrPC negating demand of ransom money and, therefore, the order taking cognizance is bad in the eyes of law and same is fit to be quashed/set aside. In support of his submission, learned counsel has relied upon the legal report of Hon'ble Supreme Court as available through **State of Haryana and ors. vs. Ch. Bhajan Lal and Ors.**



reported in **1992 Supp(1) SCC 335**.

8. On the other hand, it is submitted by learned APP for the State that from the statement of victim, it appears that the petitioners played active role in kidnapping of brother of informant and, therefore, a *prima facie* case is made out. It is submitted that rest of the arguments are of defence version, which can be looked into during trial only.

9. Taking note of aforesaid submissions, it is pointed out by learned counsel appearing for petitioners that Magistrate is duty bound to peruse the materials available on record before taking cognizance. The documents, which are sterling and of the nature of unimpeachable character was completely ignored before taking cognizance against the petitioners as statements of victim recorded u/s 164 of CrPC after recovery failed to disclose that their kidnapping was made for ransom.

10. It would be apposite to reproduce Section 364-A of the IPC for better understanding of the case, which is as under:-

"364A. Kidnapping for ransom, etc.—



Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine”.

11. It would further be apposite to reproduce para-102 of the legal report of Hon’ble Supreme Court as available through **Bhajan Lal’s case** (supra), which is as under:-

“**102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process



of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order



of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

12. The most important ingredient appears from the facial reading of the provision of Section 364-A of the IPC is kidnapping for demand of ransom, therefore, there must be demand and same was for ransom. From the perusal



of statement of victim and his driver, who was also kidnapped as recorded under Section 164 of the CrPC, it nowhere appears that there was any demand of ransom money, lacking the basic ingredient to make out a *prima facie* offence under Section 364-A of the IPC.

13. Beside aforesaid, it appears that there was money dispute between the parties as petitioners extended loan of Rs.31 lacs to the brother of O.P. No.2 as mentioned aforesaid for which admittedly money suit is pending between the parties. It also appears that out of the said dispute, the present false implication was raised. Acquaintance appears admitted.

14. In view of aforesaid factual scenario and by taking note of legal report of Hon'ble Supreme court as available through **Bhajan Lal's case** (supra), the order dated 04.03.2020 passed by the learned Judicial Magistrate-2nd Class, Patna in connection with Kankarbagh P.S. Case No.74 of 2015 and order dated 28.09.2022 passed by learned Additional Sessions Judge-XVI, Patna in Cr. Revision No.87 of 2021 are hereby quashed/set aside *qua* above-



named petitioners.

15. The application stand allowed.

16. Let a copy of this judgment be communicated
to the learned trial court forthwith.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21-07-2025
Transmission Date	21-07-2025

