

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.40741 of 2016

Arising Out of PS. Case No.-128 Year-1999 Thana- COMPLAINT CASE District- Jamui

1. Raju Paswan, Son of Kameshwar Paswan
2. Pushpa Kumari @ Pinki Kumari, D/o- Kameshwar Paswan, Resident of Mohalla-Nehru Nagar, Bhitari Begampur, Police Station-Patna City Chowk, District-Patna

... .. Petitioner/s

Versus

1. State of Bihar
2. Nikhil Kishore, Son of Nand Kishore Singh, Resident of Village-Paderia, Police Station-Haveli Kharagpur, District-Munger

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Binod Kumar Singh, Advocate Mr. Abhay Kumar Roy, Advocate Mr. Anup Kumar Pandey, Advocate
For the State	:	Mr. Binod Kumar No.3, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

15 13-02-2025 Heard Mr. Binod Kumar Singh, learned counsel for the petitioners and Mr. Binod Kumar No.3, learned APP for the State.

2. At the outset, it is submitted by petitioners' counsel that though in the instant matter initially two orders dated 01.10.2005 and 23.04.2016 by which non-bailable warrant and processes under Sections 82 and 83 of Cr.P.C. were directed to be issued against the petitioners, were challenged under Section 482 of the Code of Criminal Procedure (in short 'Cr.P.C.') but thereafter, the petitioner by filing a supplementary affidavit



dated 09.02.2017 modified their prayer and sought the relief of quashing the order dated 10.08.1999 by which cognizance of the alleged offences has been taken against the petitioners and also sought quashing of the entire criminal proceeding having arisen against the petitioners in Complaint Case No. 128(C.A.) of 1999.

3. It is submitted by petitioner's counsel that from the perusal of the entire case record of Complaint Case No. 128(C.A.) of 1999, it would be evident that before issuance of the processes under Sections 82 and 83 of Cr.P.C. as well as before directing to issue the non bailable warrant, no summons was issued by the cognizance taking court to get the appearance of the petitioners, so, both the orders dated 01.10.2005 and 23.04.2016 are completely bad in eyes of law. He further submits that from the perusal of the entire complaint, no allegation attracting an offence appears against both the petitioners and they are simply alleged to have visited alongwith their father, Kameshwar Paswan to P.W.D. Inspection Bungalow and further, they are alleged to have assisted the main co-accused persons in counting the alleged amount but these acts do not attract the alleged offences as firstly both the petitioners were minor at that time and regarding the proof of age of



petitioner no.2, her an educational certificate issued by Bihar School Examination Board has been filed as Annexure-4 which shows that she was about 12 years old at the time of the commission of the alleged acts and the petitioner no. 1 is two years elder brother of the petitioner no.2 and they simply accompanied their father, Kameshwar Paswan, and they were unable to understand the nature and consequences of the alleged acts on account of their immaturity due to minority. It is further submitted that the complainant has compromised with the co-accused Mahendra Paswan and Madhuri Paswan against whom there is main allegation and by order dated 10.08.1999, the cognizance of the alleged offences to their extent has been quashed by this Court vide order dated 05.01.2001 passed in Cr. Misc. No. 28878 of 1999, and petitioners' case stands on better footing as against them, there is no allegation.

4. After having gone through the complaint petition as well as ordersheets of the Complaint Case No. 128 (C.A) of 1999, this Court finds substance in the aforesaid submissions and from the face of the allegations levelled against the petitioners, no offence under Sections 406 and 420 of IPC even prima faice attracts against the petitioners and further, they are stated to be minor at the time of the commission of the alleged



occurrence which has not been refuted by learned APP and subjecting the petitioners to trial for the alleged offences would be complete abuse of the process of law, as such, the order impugned taking cognizance of the alleged offences against the petitioners as well as the entire proceeding having arisen and started against the petitioners in the light of the cognizance order in Complaint Case No. 128 (C.A) of 1999 is hereby quashed and the instant petition stands allowed.

(Shailendra Singh, J)

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