
(2008) 04 PAT CK 0020

In the Patna High Court

Case No : Criminal Miscellaneous No. 2359 of 2008

Akhilesh Choudhary and Another

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 17-04-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 320, 482
Penal Code, 1860 (IPC) — Section 307, 326, 364A

Citation : (2008) 3 PLJR 165

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Advocate : Mrigank Mauli and Vinay Mistry, for the Appellant; Jharkhandi Upadhaya for the State, for the Respondent

Final Decision : Dismissed

Judgement

Abhijit Sinha, J.—The two petitioners who alongwith 10 unknown others have been impleaded as accused in Complaint Case No. 696 of 2004 for allegedly abducting the son of the complainant, through this application u/s 482 Cr.P.C. have prayed for the quashing of the order dated 20.5.2005 passed therein by Sri A.K. Verma, Judicial Magistrate. First Class, Aurangabad, whereby he has taken cognizance of offence u/s 364A I.P.C. against the petitioners. One Madan Mohan Prasad filed the aforesaid complaint, inter alia, alleging that while his son Rakesh Kumar was in his foodgrain shop the two petitioners alongwith 10 unknown others came to the shop at around 6 P.M., called Rakesh Kumar outside the shop and as soon as he came out the accused persons surrounded him and at a pistol point compelled him to go with them on foot and after travelling for some distance they put him on a marshal jeep and went away towards Rafigunj, The complainant claims to have raised hulla but the accused managed to escape. He claims to have gone to the police station who gave assurances of recovering his son. It is further alleged that in the meanwhile an unknown person arrived and delivered to him a letter wherein a demand of Rs. one lac had been made by way of ransom.

2. It appears that the learned Magistrate after holding an inquiry u/s 202 Cr.P.C. took cognizance against the petitioners by the impugned order.

3. It has been submitted on behalf of the petitioners that during the pendency of the case the parties had compounded their differences and entered into a compromise and they had filed a joint compromise petition before the Court below wherein the complainant had clearly stated that his son lives in his sasural at Manpur and the present case had been filed only due to misunderstanding. In support of the submissions reliance has been placed on a decision reported in 1995 (1) P.L.J.R. 668 wherein it was observed that where the informant was no longer willing to proceed with the case, the F.I.R. may be quashed by the High Court in exercise of powers u/s 482 Cr.P.C. even when the offence is not compoundable. Reliance was also placed on the decision reported in 2007(1) P.L.J.R. 675.

4. It is true that where parties compromise their differences no gainful purpose would be served by proceeding with the case.

5. However, there is another aspect of the matter.

6. Section 320 Cr.P.C. provides that offences punishable under the Sections of the Penal Code specified in the first two columns of the table next following may be compounded by the persons mentioned in the third column of that table. A perusal of Section 320 Cr.P.C. discloses that an offence u/s 364A I.P.C. is not compoundable. Therefore, the consent given by the complainant or the joint compromise petition filed by the parties could not be utilized for the purpose of recording a finding of acquittal or dropping of the prosecution case in favour of the petitioners.

7. It is by now well settled by several decisions of the Apex Court that the compromise between the parties can be taken into account for determining the quantum of sentence for reducing the sentence. In Surendra Nath Mohanty and Anr Vs. State of Orissa, it was observed, that in view of the legislative mandate contained in Section 320 Cr.P.C. an offence can be compounded only in accordance with the provisions of the said section and following the view taken in Ram Pujan and Others Vs. State of Uttar Pradesh, and having regard to the fact that the parties had compromised and period of 10 years had elapsed from the date of the institution reduced the sentence to 5 years R.I. imposed under Sections 307 and 326 I.P.C. to the period of sentence already undergone. Even in the case of Hasi Mohan Barman and Another Vs. State of Assam and Another, , their Lordships of the Supreme Court have followed the view taken in the case of Surendra Nath Mohanty (supra) and Ram Pujan (supra). Due regard being had to the facts and circumstances of the case, I am unable to agree with the learned counsel for the petitioners and quash this application on the basis of the compromise arrived at between the parties and the joint compromise petition filed before the Court below. Accordingly, this application having no merit is dismissed.