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**(1935) 11 PAT CK 0021**  
**In the Patna High Court**

Ali Khalifa and Others

APPELLANT

Vs

Emperor

RESPONDENT

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**Date of Decision :** 20-11-1935

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 109, 359, 366

**Citation :** AIR 1936 Patna 103

**Hon'ble Judges :** Rowland, J

**Bench :** Division Bench

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**Judgement**

Rowland, J.—The petitioners have been committed to the Court of the Sessions Judge of Purnea on charges being framed against petitioners Nos. 1 to 4 u/s 366 and against petitioner No. 5 u/s 366, read with Section 109, I.P.C. This is an application to quash the commitment. The charge is to the effect that on 31st December 1934, at Jalalgarh the first four petitioners kidnapped a woman named Jaso or Jasia in order that she might be forced or seduced to illicit intercourse. It appears that the age of the woman is 18 years or more. It is not alleged that she has been kidnapped from British India and therefore having regard to Section 359, I.P.C., the kidnapping charge must be a kidnapping from lawful guardianship. But kidnapping from lawful guardianship means the taking of a minor under fourteen years, if a male, or under sixteen years, if a female, or a person of unsound mind. It has not yet been suggested that Mt. Jaso is of unsound mind and the evidence as to her age has proved that she is not a minor, and therefore she has not been kidnapped at all. u/s 366, I.P.C, it is an offence either to kidnap or to abduct a woman with certain criminal intent. Therefore I ought to see whether there is material on which a charge could properly have been framed under the same section for abduction instead of kidnapping. Abduction is defined in Section 362 and the offence is committed by forcibly compelling or by deceitful means inducing any person to go from any place. There is some evidence as to the departure of Jaso from the house of Shebali, the complainant. She was seen by witnesses going with the first four petitioners. She and they told the witnesses that she was going to the house of Motijan,

petitioner No. 5, in response to an invitation. It is apparent on the face of the evidence that she was going willingly and had not been by force compelled to go. There is no evidence whatever that she had been induced to go by any deceitful means. If such had been the fact, the essential witness to establish it was Jaso herself. She has not been examined. On 3rd January 1935, the same day on which the complainant's petition of complaint in this case was presented, another petition was presented purporting to be by Jaso herself and stating that she had voluntarily left her brother Gafoor who like herself had been staying at Shebali's house. The Magistrate issued search warrant for the production of Jaso who surrendered on 27th February 1935, and was released on bail. The Magistrate did not take any statement from her on that occasion. This is deplorable. She was entrusted to the custody of one Hahib who stood bail for her appearance. On 19th May 1935, a case was instituted against Shebali and others on the allegation that they, on 19th May 1935, had forcibly seized and removed her while she was on a railway journey. The result of that case does not appear in these proceedings, but it is admitted that after that date she was in the custody of Shebali. Summons had been issued for her appearance in Court on 1st June 1935, as a witness in the present enquiry, but she did not appear and the Magistrate passed order for her production on 15th June 1935, when, instead of producing her, Shebali made an excuse. The prosecution on that date put in a petition praying the Court to dispose of the case on the materials on the record on the ground that Jaso's evidence was not desired and was not necessary. It is apparent that Shebali has been deliberately keeping back the evidence of Jaso. There is thus no evidence whatever that Jaso was either kidnapped or abducted. The circumstances are such that a remand for taking Jaso's evidence would not be justified. The commitment must be set aside. The rule is made absolute. Let the petitioners be discharged from their bail.