

(2006) 01 PAT CK 0085

In the Patna High Court

Case No : Criminal Miscellaneous No. 2808 of 2005

Bisheshwar Tamoli and Others

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 19-01-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 227, 482
Penal Code, 1860 (IPC) — Section 34, 363, 366A

Citation : (2006) 2 PLJR 219

Hon'ble Judges : Rekha Kumari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rekha Kumari, J.—This is an application u/s 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code) for quashing the order dated 14.12.2004 passed by the Additional Sessions Judgecum-Fast Track Court No. II, Nalanda at Bihar Sharif in Sessions Trial No. 419 of 2003 by which he has rejected the prayer of the petitioners to discharge them under the provisions of Section 227 of the Code. Heard.

2. It appears that the complainant-opposite party No. 2 had at first lodged an F.I.R. that her daughter had been forcibly kidnapped for the purpose of marriage. The police after investigation submitted final report as case false. The complainant, hence, filed a protest petition in the nature of complaint. The complainant was then examined on solemn affirmation and witnesses including the victim girl was examined u/s 202 of the Code. Thereafter processes were issued against the petitioners for facing trial under sections 363, 366A/34 of the Indian Penal Code and the case was committed to the Court of Session. In the Session Court, the petitioners filed a petition for discharging them u/s 227 of the Code. The learned Additional Sessions Judge from the materials on record found that the complainant in his examination on solemn affirmation has supported the allegations made in the complaint. The victim girl and other witnesses have also

supported the allegation and there is, prima facie, case under sections 363, 366A/34 of the Indian Penal Code against the petitioners. So, he rejected the prayer of the petitioners.

3. Learned counsel for the petitioners submitted that actually the victim girl is of questionable character and she out of her own will had left the house and was found at Rajgir on 7.3.1998 in a suspicious manner. He also submitted that as the petitioners used to raise objection against her conduct, they have been falsely implicated. He then submitted that the complainant is a constable and if there would have been any truth in the allegation, the police would not have submitted final report as "case false". It is also submitted by him that there is discrepancy in the date of occurrence as stated in the complaint petition and as stated in the F.I.R. and that the victim girl had stated before the police that she had voluntarily left her house.

4. It has been held by the Apex Court in the case of State of Maharashtra vs. Salman Salim Khan and Anr., (2000)1 S.C.C. 525 that though it is open to the High Court to quash the charges framed in the trial court but the same cannot be thrown by weighing the correctness or insufficiency of evidence. The principle to be adopted by the High Court in such cases should be that if the entire evidence adduced by the prosecution is to be believed, would it constitute an offence or not. It is only at the stage of trial that the truthfulness, sufficiency and acceptability of the evidence can be judged.

5. Therefore, when the evidence on record of the complaint case, prima facie, constitute the offences under sections 363 and 366A/34 of the Indian Penal Code, I do not want to interfere with the impugned order. In the result, this application is dismissed.