
(2008) 10 PAT CK 0042

In the Patna High Court

Case No : Criminal Miscellaneous No. 49352 of 2006

Manish Agarwal and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 01-10-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 366A

Citation : (2009) 2 PLJR 954

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Advocate : Ajay Kumar Thakur and Raghunandan Kumar Singh, for the Appellant; Jharkhandi Upadhyay for the State and Mr. Arvind Kumar Singh No. 1 for O.P. No. 2, for the Respondent

Final Decision : Allowed

Judgement

Abhijit Sinha, J.—This application is for the quashing of the order dated 28.8.2006/4.9.2006 passed by the learned Chief Judicial Magistrate, Gaya, in Bodh Gaya P.S. Case No. 7 of 2006, G.R. No. 83 of 2006 whereunder while differing from the final form submitted by the police, the learned Magistrate has taken cognizance and issued processes against the petitioners summoning them to face the trial for offences u/s 366A I.P.C. The prosecution case is based upon the written report submitted by one Sanjiv Kumar Ranjan alias Sanjiv Kumar Singh, impleaded herein as O.P. No. 2 wherein it was stated inter alia that his minor cousin Juli Kumari resides with him in his joint family at Pachhatti in Bodh Gaya and is a student of Sakyabhumi College at Bodh Gaya even as her father Ram Ayodhya Singh is posted in the Anchal Office at Bathani and uncle Nand Kishore Singh lives in the ancestral village home and looks after the agricultural operation of the family. It is alleged that on 31.12.2005, the informant had gone to Gaya at around 6 P.M. even as his mother had gone visiting a neighbour and his wife and cousin Juli were at home and when he returned at about 7 P.M. he was informed by his mother and wife that Juli could not be found in the house.

Frantic search made for her produced no positive results. It is alleged that one Ajay Singh, son of Late Hari Singh of Pachhatti informed him that he had seen Juli with Satish Kumar Agarwal alias Minku Agarwal on a red colour Hero Honda motorcycle bearing Registration No. D.L. 7839. On receipt of such information the informant claims to have searched upto the Station but no trace could be found of Juli and he returned home and informed Ram Ayodhaya Singh about the matter over telephone. It is further alleged that at around 11 P.M. on that very night he received a telephone call from Satish Kumar alias Minku Agarwal informing him that he had brought Juli Kumari with him and threatened him not to file any case nor search for them or else his family would be killed. The informant requested Satish to return home since his cousin was a minor but he did not heed the advice and retorted that he would be marrying Juli on the following day. It is further alleged that on the following day the informant's father arrived and he and the informant went in search of Juli but could find no trace of her and afraid of the social ostracism delayed in filing the case. On inquiry it was gathered that the telephone call received from Satish on the night of 31.12.2005 was from his mobile set bearing No. 9431271757. It was further learnt that the two brothers of Satish and one bhabhi had also actively helped Satish in taking away Juli. It is also said that the informant learnt from the uncle of Satish that Satish is staying at the place of his Phupha (Aunt's husband), namely, Udai Chandra Agarwal at Imamganj Bazar. On the aforesaid premise a request was made to the police to recover minor Juli and take action against her abductors.

2. It has been submitted on behalf of the petitioners that the victim girl herself appeared before the Deputy Superintendent of Police, Headquarters, who informed the Investigating Officer over telephone whereafter the Investigating Officer brought the girl along with him and got her medically examined and thereafter her statement was recorded u/s 164 Cr.P.C. at the instance of the Investigating Officer. It was further submitted that Juli disclosed her age as 20 years before the Magistrate which was also the age assessed by the Magistrate and in the said statement u/s 164 Cr.P.C. Juli had stated that she had left home out of her free will and volition with Satish on 31.12.2005 on motorcycle for Chatra and from there they went to Hazaribagh by bus and again from Hazaribagh they went to Ranchi and to different other places and on 9.1.2006 she married Satish Kumar out of her free will and volition at the Arya Samaj Mandir and on 16.1.2006 her marriage was registered before the Registrar at Ghaziabad in U.P. and since then they have been living together as husband and wife. She also stated that she was happy with her husband and her in-laws had no objection to the said marriage and it was only to harass her and her husband that her cousin had filed the false case. The marriage certificate issued by the Arya Samaj Mandir as also the Marriage Registration Certificate have been appended as Annexures to the application in support of the submissions.

3. The learned counsel for the petitioners referred to various paragraphs of the case diary to show that the witnesses examined in course of the investigation

had not supported the prosecution case and in fact, they have all testified against the prosecution case. The learned counsel referring to the impugned order submitted that the learned Magistrate while differing with the final form submitted by the police had taken resort to the statement in paragraphs 6, 7, 8 and 14 of the case diary but as would appear from perusal of the case diary, paragraph 6 was the statement of Ajay Singh who stated that while he was returning, he saw Juli going with Satish on motorcycle. Similarly, in paragraph 7, Shail Devi, the mother of the informant, who was not an eye witness to the occurrence had merely stated that Juli Kumari had left the house and she had not returned and she referred to the statement of Ajay Singh from whom she had learnt that he had seen Juli going with Satish on a motorcycle. In paragraph 8, Ganesh Mistri, has merely stated that he saw Juli Kumari going with Satish on a motorcycle and Ram Ayodhya Singh, the father of the informant, in paragraph 14 of the case diary stated that he learnt that co-villager, Satish Kumar Agarwal, had allured his niece and he has further stated that all the accused persons including the petitioners with a view to get her married had allured her which apparently appears to be based on mere suspicion.

4. It appears from the statement of Juli Kumari recorded u/s 164 Cr.P.C. that she had stated her age as 20 years and that was the age assessed by the Magistrate recording her statement. It also appears from the identity card issued by the Election Commission of India on 21.9.2005 that Juli Kumari was aged 19 years on 1.1.2005. From the above, it would be apparent that on the date of occurrence i.e., 31.12.2005, Juli Kumari was a major and not a minor. Although the report of her medical examination is not available, the Photo Identity Card and the statement of the victim girl recorded u/s 164 Cr.P.C. clearly goes to show that she was over 19 years of age on the date of occurrence and, therefore, a major.

5. It appears from the impugned order that the learned Magistrate in differing from the final form submitted by the police relied upon the statement of the witnesses available in paragraphs-6, 7, 8 and 14 of the case diary and on careful consideration whereof he formed an opinion that there was sufficient materials to proceed against the accused persons. That unfortunately is not the correct and true picture and the court has fallen in error in coming to a finding that there was sufficient materials against the accused persons to summon them to face trial u/s 366A I.P.C. What the referred to paragraphs states is of the three witnesses seeing Juli Kumari accompanying Satish on a motorcycle and what Ram Ayodhya Singh states is based on hearsay. Therefore, taking into consideration an over all picture of the situation at hand and also taking into consideration the statement of the victim girl recorded u/s 164 Cr.P.C. I am of the definite opinion that the court below had fallen in error in differing from the final report submitted by the police and summoning all the accused persons to face the trial and permitting the trial to continue, in my opinion, in the facts and the circumstances of the case, would be an abuse of the process of the court.

6. Although the learned counsel for O.P. No. 2 was present in court, he could not lend much support to the prosecution case and as such the submissions advanced by the learned counsel for the petitioners remain unrebutted. Having given my anxious thoughts to the situation at hand and the materials available on record, I am of the opinion that the prosecution of the petitioners would be an abuse of the process of the court and accordingly while allowing the application, the order taking cognizance, so far as these petitioners are concerned, is hereby quashed.