

(2010) 11 PAT CK 0127

In the Patna High Court

Case No : Criminal Miscellaneous No. 34724 of 2007

Sumitra Devi and Ravindra Sah @ Ravin Kumar Sah

APPELLANT

Vs

The State of Bihar and Ram Lakhan Sah

RESPONDENT

Date of Decision : 08-11-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3) , 482
Penal Code, 1860 (IPC) — Section 34, 366, 379

Citation : (2010) 11 PAT CK 0127

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—Two Petitioners, while invoking inherent jurisdiction of this Court under 482 of the Code of Criminal Procedure, have prayed for quashing of an order dated 5.5.2007 passed in Bahera P.S. Case No. 236 of 2006, G.R. No. 237 of 2006 by learned Addl. Chief Judicial Magistrate, Benipur (Darbhanga). By the said order, the learned Chief Judicial Magistrate has taken cognizance of offences under Sections 379, 366 and 34 of the Indian Penal Code while differing with the police report.

2. Short fact of the case is that Opp. Party No. 2 filed a complaint in the court of learned Addl. Chief Judicial Magistrate, Benipur, which was numbered as Complaint Case No. 232 of 2006 against both the Petitioners on an allegation that both the Petitioners conspiring with each other had kidnapped his wife and two children. It was alleged that for earning livelihood, the complainant had gone to Punjab and thereafter Petitioner No. 1 was regularly meeting with his wife and subsequently the wife of the complainant was kidnapped by accused persons. The said complaint was referred to the police for its registration and investigation u/s 156(3) of the Code of Criminal Procedure and, as such, an F.I.R. vide Bahera P.S. Case No. 236 of 2006 was registered on 7.11.2006 for the offences under Sections 379, 366 and 34 of the Indian Penal Code against both the Petitioners.

During investigation, it was found that the allegation was false and, as such, final report was submitted by the police. After submission of final report, the learned Magistrate differing with the police report has taken cognizance of offences as stated above.

3. I have perused the materials available on record as well as the impugned order. It is true that the learned Magistrate was empowered to take cognizance while differing with the police report, but at the same time it was required for him to assign some reason for differing with the police report/final form. After going through the impugned order, the Court is satisfied that in a mechanical manner, the said order was passed, which is not permissible in the eye of law. On the basis of materials available on record, the Court is of the opinion that the order impugned is not sustainable in the eye of law.

4. Accordingly, the impugned order of cognizance i.e. order dated 5.5.2007 passed in Bahera P.S. Case No. 236 of 2006 by learned Addl. Chief Judicial Magistrate, Benipur (Darbhanga) is hereby set aside and the petition stands allowed.