

(2008) 12 JH CK 0043**Jharkhand High Court****Case No:** None

Deepak Malakar

APPELLANT

Vs

The State of Jharkhand and
Another

RESPONDENT

Date of Decision: Dec. 19, 2008**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 363, 366A

Hon'ble Judges: Narendra Nath Tiwari, J**Bench:** Single Bench**Final Decision:** Dismissed**Judgement**

Narendra Nath Tiwari, J.

In this Cr.M.P the petitioner has prayed for quashing the order taking cognizance dated 17.2.94 passed by the learned Chief Judicial Magistrate, Hazaribagh in T. R. Case No. 1136/04 whereby the said learned Chief Judicial Magistrate has taken cognizance of the offence under Sections 363/366(A) IPC against the petitioner.

2. The prosecution case, in which the cognizance has been taken, in short is that the informant's daughter Kumari Pattima Mishra, aged about 17 years, used to attend coaching classes in Raghunath Girls' School, Pagoda Chowk in morning session for the last four months. On 3.1.92 at 8 A.M she had gone to attend the coaching classes, but did not return home in time. Thereafter, the informant started searching her in the town, but he could not trace out his daughter. He then started inquiring from his relations and went to search, but she was not found. When the informant returned Hazaribagh, he learnt that her daughter was kidnapped by the petitioner who was also absent since 3.1.92 from Hazaribagh town. Before attending the coaching classes, the informant's daughter had taken admission in Short Hand and Typing in Nidhi Typing Institute in which the petitioner was instructor.

3. The case was investigated into and the charge sheet was submitted under Sections 363/366(A) IPC against the petitioner and two others. On perusal of the materials In the case diary and the charge sheet, the learned Court below took cognizance of the offences under Sections 363/366(A) IPC against the petitioner and two others.

4. The petitioner has challenged the said order taking cognizance mainly on the ground that the informant's daughter was not kidnapped, rather she had left her house voluntarily to go to Allahabad where his uncle is in service. The informant's daughter after passing the Intermediate of Science Examination was willing to appear in the Medical Test Examination and for that she had to join coaching classes either at Patna or Allahabad. But her parents were not allowing her to go outside for further studies. Therefore, she had left the house without informing her parents and had gone to Allahabad. The informant also subsequently came to know about the same and filed" a petition in the Court of the learned Chief Judicial Magistrate. In spite thereof, the police submitted the charge sheet showing the petitioner as an absconder. It has been submitted that If these facts are properly verified, no case under the alleged penal Sections is constituted against the petitioner and in that circumstance, the order taking cognizance as well as the entire criminal proceeding against the petitioner are the sheer abuse of the process of the Court and in order to secure the ends of justice, the impugned order taking cognizance as well as the entire criminal proceeding against the petitioner are liable to be quashed.

5. Mr. P.P.N. Roy, learned Sr. counsel appearing on behalf of the petitioner, submitted that the facts stated by the petitioner can be verified even by this Court in exercise of its jurisdiction u/s 482 Cr.P.C. Learned Counsel referred to and relied on a decision of the Supreme Court in All Cargo Movers (1) Pvt. Ltd. and Ors. v. Dhanesh Badarmal Jain and Anr. reported in 2008(1) JUR (SC) 51 and submitted that when there is malafide or otherwise, this Court should Intervene and quash the proceeding in order to serve the ends of justice.

6. On the other hand, the learned A.P.P opposed this Cr.M.P and submitted that the petitioner has sought quashing the order taking cognizance as well as the entire criminal proceeding on the factual grounds which are to be established by adducing evidences, The petition, which is said to be filed by the informant, is not admitted. There Is no exhibited document to establish that the Informant's daughter had left the house voluntarily and had gone to Allahabad where her uncle was residing. In paragraph 9 of this petition the petitioner himself has stated that the girl Partima Mishra could not be available for making any such statement before the I.O. There is no cogent material or undisputed document on the basis of which this Court can come to any concrete conclusion on the disputed facts.

7. I have heard leaned counsel for the parties and perused the facts and materials on record. On perusal of the order taking cognizance dated 17.2.94, it is evident that the learned Magistrate has taken cognizance of the offences under Sections

363/366(A) IPC against the petitioner on the basis of the materials in the case diary and the charge sheet submitted before him. Though the petitioner has submitted that the allegations are false, there is no admitted document on record on the basis of which the case can be concluded in favour of the petitioner by this Court. Though one affidavit has been brought on record, which is said to have been sworn and signed by Partima Mishra, but the said document is not admitted by the prosecution. In paragraph 9 of this petition the petitioner has himself stated that the statement of the girl Partima Mishra could not be recorded by the I.O as she was not available for the same.

8. I, therefore, find no cogent ground on which this Court can intervene in the matter and quash the order taking cognizance as well as the entire criminal proceeding against the petitioner. Though the decision of the Supreme Court in All Cargo Movers (1) Pvt. Ltd. (Supra) has propounded a law that for the ends of justice this Court can also take into consideration the admitted documents, but the said decision has got no application to the facts of the instant case as there is no admitted document on the basis of which any clear conclusion can be arrived at, I, therefore, find no case made out for the intervention of this Court in exercise of its jurisdiction u/s 482 Cr.P.C. This Cr.M.P is, accordingly, dismissed.