

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.21262 of 2019
CNR No. BRHC010328632019

Arising Out of PS. Case No.-244 Year-2018 Thana- PIRO District- Bhojpur

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1. Indu Devi W/o Awadh Narayan Singh @ Haridwar Singh R/o Village- Laharabad, P.S.- Piro, District- Bhojpur.
 2. Awadh Narayan Singh @ Haridwar Singh S/o Shri Shiv Bachan Singh R/o Village- Laharabad, P.S.- Piro, District- Bhojpur.
 3. Aman Kumar S/o Satya Narayan Singh R/o Village- Shivpur, P.S.- Dhangai, District- Buxar.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Devlal Singh S/o Late Bhola Singh R/o vill - Lahrabad, P.S. - Piro, Distt. - Bhojpur

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Harsh Singh, Adv
	:	Mr. Abhijeet, Adv
For the Opposite Party/s	:	Mr. Rajendra Nath Jha, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 01-10-2026

Heard the parties.

2. The present application has been filed invoking the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure for quashing the order dated 18.12.2018 passed by the learned A.C.J.M.-1st, Bhojpur at Ara in connection with Piro P.S. Case No.244 of 2018, whereby, differing from the final form submitted by the police, cognizance has been taken against the petitioners for the offence punishable under Section 366(A) of the Indian Penal Code.

3. The prosecution case, in brief, as emerging from



the written report, is that the daughter of opposite party no.2, namely, Nisha Kumari, aged about 15 years, was a student of Class-X at Lahrabad Government School. It is alleged that on 11.07.2018 at about 6.00 A.M., she had gone to attend coaching at Adarsh Coaching Centre near Oswalia mod, but did not return home till late evening.

4. It is further alleged that the informant and his family members made search for the girl and subsequently information was received that Amit Kumar had taken away the informant's daughter by alluring her on the pretext of marriage. It is alleged that when the informant went to the house of Amit Kumar, his parents and cousin threatened him and compelled him to leave the place. According to the prosecution, owing to fear of social consequences, the informant did not immediately lodge the case and continued searching for his daughter. Ultimately, the written report was submitted on 19.07.2018.

5. On the basis of the aforesaid written report, Piro P.S. Case No.244 of 2018 was instituted for the offences alleged therein. Investigation was thereafter taken up. Petitioners are father, mother and maternal uncle of the accused Amit Kumar, who is not the petitioner for the present.

6. It is relevant to notice at this stage that the



alleged occurrence is of 11.07.2018, whereas the written report came to be lodged on 19.07.2018, thus there is a gap of seven days between the alleged disappearance of the victim girl and lodging of the FIR. The explanation appearing in the prosecution version is that the informant and his family were searching for the girl and that the informant did not immediately approach the police owing to fear of society. The said aspect has been specifically relied upon by the petitioners while questioning the manner in which the prosecution story subsequently developed.

7. The investigation culminated in submission of Final Form/Report No.197/18 dated 23.09.2018. The police, after investigation, did not send the present petitioners up for trial. The petitioners have specifically relied upon the final form to submit that the investigating agency, upon consideration of the material collected during investigation, did not find sufficient material against them warranting their prosecution.

8. The further material relied upon by the petitioners is the statement of the victim girl recorded under Section 164 of the Cr.P.C. According to the petitioners, in the said statement the victim did not support the allegation that she had been kidnapped or taken away by the petitioners. Rather, she stated that she had herself left her house on account of her parents scolding her in



relation to her studies. It is specifically contended that the victim has not attributed any overt act to the present petitioners and has not even whispered any allegation against them.

9. Despite the aforesaid final form, the learned trial court, by the impugned order dated 18.12.2018, differed with the police report and proceeded to take cognizance under Section 366(A) of the IPC against the petitioners.

10. Learned counsel for the petitioners submits that the impugned order does not disclose any legally sustainable basis for differing with the conclusion arrived at by the investigating agency. It is submitted that the present petitioners were not sent up for trial in the final form and, therefore, there was material before the learned Magistrate showing that the allegations made in the FIR, insofar as the present petitioners are concerned, had not been substantiated during investigation.

11. Learned counsel further submits that the prosecution story itself discloses a seven-day delay in lodging the FIR. It is contended that although the alleged occurrence is of 11.07.2018, the written report was lodged only on 19.07.2018. According to learned counsel, the explanation furnished in the FIR is not sufficient to explain the subsequent implication of the petitioners, particularly when the victim herself has not supported



the allegation of kidnapping in her statement under Section 164 Cr.P.C.

12. It is next submitted that the statement of the victim recorded under Section 164 Cr.P.C. assumes considerable significance in the facts of the present case. Learned counsel submits that the statement was recorded before a Magistrate and the victim has given a version materially different from the allegations contained in the FIR. According to him, when the victim herself has not supported the foundational allegation of kidnapping and has stated that she left her house on her own, continuation of the proceeding against the present petitioners would amount to abuse of the process of the Court.

13. Learned counsel for the petitioners has also placed reliance upon the judgment of a Co-ordinate Bench of this Court rendered in **Cr. Misc. No.48023 of 2013, Krishna Mahto @ Krishan Kumar Mahto & Ors. v. State of Bihar & Anr.**, decided on 11.05.2017, wherein also the allegation was under Section 366(A)/34 of the IPC. In the said case, the victim's statement under Section 164 Cr.P.C. did not support the allegation of kidnapping, the police had submitted final form treating the case as mistake of facts, but the learned Magistrate had nevertheless taken cognizance. The Co-ordinate Bench, upon



considering the FIR, Section 164 Cr.P.C. statement, final form and case diary, quashed the order of cognizance and the entire criminal proceeding.

14. Learned counsel submits that the factual circumstances of the present case stand on an even stronger footing, inasmuch as the victim has not attributed any role to the present petitioners in her statement under Section 164 Cr.P.C. and the police, after investigation, did not send them up for trial.

15. Learned counsel has also placed reliance upon the judgment of the Hon'ble Supreme Court in **Suresh Garodia v. State of Assam & Anr., 2024 SCC OnLine SC 38**, particularly paragraph 15 thereof, to submit that the circumstances attending the delay in setting the criminal law into motion can be considered while examining whether continuation of the criminal proceeding would amount to abuse of process. In paragraph 16, the Hon'ble Supreme Court, having regard to the material collected during investigation, held that continuation of the proceedings would amount to abuse of process of law.

16. Learned counsel has further relied upon the legal report of **Vinod Gupta v. State of Madhya Pradesh, 2024 INSC 181**, wherein the Hon'ble Supreme Court considered the FIR in juxtaposition with the statement recorded under Section



164 Cr.P.C. and took note of material discrepancies between the two versions while exercising jurisdiction under Section 482 Cr.P.C.

17. Per contra, learned A.P.P. for the State has opposed the application. It is submitted that the learned Magistrate is not bound by the opinion expressed by the police in the final form and is competent to take cognizance if the materials available in the case diary disclose commission of an offence. It is further submitted that the statement under Section 164 Cr.P.C. cannot, by itself, be treated as a conclusive determination of the truth or otherwise of the prosecution case.

18. Learned counsel appearing for opposite party no.2 has also opposed the prayer for quashing and submits that the allegation relates to a minor girl and the prosecution should not be terminated at the threshold merely on the basis of the statement relied upon by the accused.

19. I have considered the submissions advanced on behalf of the parties and have gone through the materials available on record.

20. There can be no quarrel with the proposition that the power under Section 482 Cr.P.C. is extraordinary in nature



and is required to be exercised sparingly and with circumspection. At the same time, the inherent jurisdiction of this Court is meant to secure the ends of justice and to prevent abuse of the process of any Court. The jurisdiction is not rendered unavailable merely because the Magistrate has taken cognizance.

21. It is equally settled that the opinion expressed by the police in a final report does not bind the Magistrate. The Magistrate is entitled to apply his judicial mind to the materials collected during investigation and, if the materials disclose sufficient ground for proceeding, may differ from the police report. Thus, the mere fact that the police have submitted a final form in favour of an accused cannot, by itself, be made the sole basis for quashing the cognizance order.

22. But the present case cannot be examined merely on the basis of the final form. The final form is one circumstance. The seven-day delay in lodging the FIR is another circumstance. The statement of the victim recorded under Section 164 Cr.P.C. is yet another. The question before this Court is whether these circumstances, when examined cumulatively with the allegations attributed to the present petitioners, disclose sufficient material to justify their prosecution under Section 366(A) of the IPC.

23. Section 366(A) IPC requires, *inter alia*, an act of



procurement of a minor girl by inducing her to go from any place or to do any act, with the requisite intention or knowledge concerning her being forced or seduced to illicit intercourse with another person. Therefore, the mere circumstance that the girl was a minor, by itself, does not dispense with the requirement of examining whether the foundational allegations constituting the offence are available against the particular accused sought to be prosecuted.

24. In the present case, the prosecution story alleges that the victim girl had gone to attend coaching on 11.07.2018 and thereafter did not return home. The written report, however, was lodged only on 19.07.2018. The delay is sought to be explained on the ground that the informant was searching for his daughter and was apprehensive of social consequences. Such explanation may be relevant while considering the prosecution case at the stage of trial; however, when the Court is exercising its inherent jurisdiction and is required to examine whether continuation of the proceeding against particular accused persons would amount to abuse of process, the surrounding circumstances cannot be completely ignored.

25. More importantly, the investigation did not result in the present petitioners being sent up for trial. The investigating



agency, after collecting the material, submitted final form dated 23.09.2018. Thus, the police investigation itself did not find adequate material to prosecute the petitioners.

26. The significance of the final form, therefore, lies not in the proposition that the Magistrate was bound by it, but in the fact that the police investigation did not corroborate the allegations against the present petitioners to the extent necessary for sending them up for trial.

27. Thereafter comes the statement of the victim recorded under Section 164 Cr.P.C. This Court is conscious that a statement recorded under Section 164 Cr.P.C. is not, by itself, substantive evidence for the purpose of establishing guilt at trial. Nevertheless, at the stage of considering the legality of continuation of criminal proceedings under Section 482 Cr.P.C., where such statement forms part of the material collected during investigation and is sought to be relied upon to demonstrate that the very foundation of the allegation is absent, the Court cannot shut its eyes to such material.

28. In the present case, the significance of the Section 164 Cr.P.C. statement is not that it conclusively establishes the innocence of the petitioners. Its significance is more limited and, in my considered view, more fundamental, the



very girl who is alleged to have been kidnapped has not supported the allegation of kidnapping in her statement before the Magistrate. As per the material placed before this Court, she has stated that she had left her house on her own account of being scolded by her parents regarding her studies. No allegation has been attributed by her to the present petitioners.

29. This aspect assumes greater significance because the present petitioners were not sent up for trial by the investigating agency. Thus, there is a convergence of three circumstances: first, the FIR came to be lodged after seven days of the alleged occurrence; secondly, investigation culminated in a final form in which the present petitioners were not sent up for trial; and thirdly, the victim, in her statement recorded under Section 164 Cr.P.C., has not supported the allegation of kidnapping or attributed any role to the present petitioners.

30. The Co-ordinate Bench judgment relied upon by the petitioners is of considerable relevance. In **Cr. Misc. No.48023 of 2013**, the allegation under Section 366(A)/34 IPC was considered by this Court. There also the victim's statement under Section 164 Cr.P.C. did not support the allegation of kidnapping; the police had submitted final form as mistake of facts; nevertheless, cognizance was taken by the learned



Magistrate. The Co-ordinate Bench examined the FIR, Section 164 statement, final form and case diary and found that the victim had specifically stated that she had not been kidnapped. On that factual foundation, the cognizance order as well as the consequential proceeding were quashed.

31. I am conscious that a decision rendered under Section 482 Cr.P.C. has to be understood in the factual setting in which it was rendered. The aforesaid coordinate Bench decision, therefore, cannot be treated as laying down an inflexible rule that whenever a victim's statement under Section 164 Cr.P.C. is favorable to an accused, the proceeding must necessarily be quashed. The ratio becomes relevant here because the factual circumstances noticed therein bear substantial resemblance to the material presently before this Court.

32. The approach of the Hon'ble Supreme Court in **Suresh Garodia Case (supra)** also supports examination of the circumstances surrounding the institution and continuation of the criminal proceeding rather than mechanically permitting prosecution to continue merely because cognizance has been taken. In paragraph 13, the Hon'ble Supreme Court considered the absence of explanation for an extraordinary delay as a relevant circumstance and, in paragraph 14, considered the



investigation material in determining whether continuation of the proceeding would amount to abuse of process.

33. The judgment of the Hon'ble Supreme Court in **Vinod Gupta Case (supra)** is also of some assistance on the limited question of examining the FIR alongside the Section 164 Cr.P.C. statement where the two versions materially differ. The Supreme Court, in paragraphs 6 to 8, considered the discrepancies between the FIR and the Section 164 statement in determining whether continuation of the prosecution would serve any legitimate purpose.

34. It is true that the allegations concerning a minor girl require the Court to approach the matter with due sensitivity. However, sensitivity cannot mean that the Court must disregard material which forms part of the investigation itself. The inherent jurisdiction of this Court is intended to protect the process of law from being converted into an instrument of harassment where the material, taken cumulatively, does not disclose sufficient foundation for continuation of the proceeding against the persons before the Court.

35. At the same time, this Court is not undertaking an appreciation of evidence as would be done after a full-fledged trial. The question is narrower: whether on the material presently



available, there exists sufficient foundation for subjecting these petitioners to a criminal trial under Section 366(A) IPC.

36. At this juncture, it would be apposite to reproduce paragraph no(s). 5 and 6 of judgment of Hon'ble Supreme Court as available through **Sat Prakash Vs. State of Haryana and Another, [(2015) 16 SCC 475]**, which is as under:-

5. The charge with reference to Section 366-A of the Penal Code needs a closer examination. Section 366-A of the Penal Code is extracted hereunder:

"366-A.Procuration of minor girl.—Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine."

A perusal of the aforesaid section reveals that the inducing of the minor to constitute an offence under Section 366-A should have been with reference to an intent to force or seduce her "... to illicit intercourse with another person ...". In fact, there is no mention of any other person in the sequence of allegations levelled against the appellant.

6. In the above view of the matter we are satisfied that the charge under Section 366-A IPC was also not sustainable against the appellant. For the reasons recorded hereinabove, we are of the view that the impugned order [*Sarla v. State of Haryana*, 2011 SCC OnLine P&H 124] passed by the High Court convicting the appellant under Section 366-A of the Penal Code is also liable to be set aside. The same is accordingly hereby set aside.

37. In the facts of the present case, the answer, in



my considered view, has to be in the negative. The seven-day delay, though not by itself sufficient to terminate the prosecution, becomes relevant when examined alongside the subsequent course of investigation. The police, after investigation, did not send the present petitioners for trial. More significantly, the victim in her Section 164 Cr.P.C. statement has not supported the allegation of kidnapping and has not attributed any role to the present petitioners.

38. The learned Magistrate was undoubtedly entitled to disagree with the police report. However, the impugned order must disclose the material which persuaded the learned Magistrate to take cognizance against the present petitioners notwithstanding the final form and the material collected during investigation. On a consideration of the material placed before this Court, the continuation of the proceeding against the present petitioners does not appear to have sufficient factual foundation.

39. The inherent power is not exercised here merely because another view of the evidence is possible. It is being exercised because the material relied upon by the petitioners, particularly the Section 164 Cr.P.C. statement of the victim read with the final form submitted after investigation, goes to the root of the allegation against the present petitioners.



40. In the totality of the circumstances, permitting the petitioners to face the rigours of criminal trial, when the victim herself has not supported the basic allegation of kidnapping against them and the investigating agency has not sent them up for trial, would not advance the cause of justice.

41. Consequently, this Court is of the considered view that the impugned order dated 18.12.2018, insofar as it relates to the present petitioners, suffers from an infirmity warranting interference in exercise of the inherent jurisdiction of this Court under Section 482 Cr.P.C.

42. Accordingly, the order dated 18.12.2018 passed by the learned A.C.J.M.-I, Bhojpur at Ara in connection with Piro P.S. Case No.244 of 2018, whereby cognizance has been taken against the present petitioners under Section 366(A) of the Indian Penal Code, is hereby quashed and set aside.

43. Consequently, the criminal proceeding arising out of Piro P.S. Case No.244 of 2018, insofar as the present petitioners, namely, Indu Devi, Awadh Narayan Singh @ Haridwar Singh and Aman Kumar, are concerned, also stands quashed and set aside.

44. It is made clear that the observations made



here-in-above are confined to examination of the legality of continuation of the criminal proceeding against the present petitioners in exercise of the inherent jurisdiction of this Court and shall not be construed as an adjudication upon the guilt or innocence of any other person.

45. Hence, this application stands allowed.

46. TCR (Trial Court Records), if any, be returned to the learned Trial Court alongwith the copy of this judgment.

(Chandra Shekhar Jha, J.)

S.Tripathi/-

AFR/NAFR	AFR
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