

Upendra Kumar Vs. State of Bihar

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Court : Patna

Decided On : Mar-07-2006

Judge : Rekha Kumari, J.

Acts : Hindu Marriage Act - Sections 9; [Code of Criminal Procedure \(CrPC\) , 1973](#)
- Sections 164, 184 and 482; Indian Penal Code (IPC) - Sections 366 and 366A

Appeal No. : Criminal Misc. No. 18978 of 2005

Appellant : Upendra Kumar

Respondent : State of Bihar

Disposition : Application dismissed

Prior history : Rekha Kumari, J. 1. Heard. 2. This is an application filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code) for quashing the order dated 18.3.2006 passed by the Additional Chief Judicial Magistrate, Sheikhpura in Sheikhpura P.S. Case No. 27/2004 by which he has taken cognizance against the petitioner under Section 366A of the Indian Penal Code and has issued processes against him to stand trial. 3. Heard learned Counsel for the petitioner, learne

Judgement :

Rekha Kumari, J.

1. Heard.

2. This is an application filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code) for quashing the order dated 18.3.2006 passed by the Additional Chief Judicial Magistrate, Sheikhpura in Sheikhpura P.S. Case No. 27/2004 by which he has taken cognizance against the petitioner under Section 366A of the Indian Penal Code and has issued processes against him to stand trial.

3. Heard learned Counsel for the petitioner, learned Counsel for the informant and the learned A.P.P. for the State.

4. Learned Counsel for the petitioner submitted that the case has been registered under Section 366A of the Indian Penal Code but the victim girl had gone with him out of her free will. She had sworn an affidavit (Annexure-3) on 19.3.2004 that she was aged about 19 years and that had married the petitioner on 4.11.2003. He further referred to Annexure-5 which is a copy of plaint of Title Suit No. 754 of 2004 filed under Section 9 of the Hindu Marriage Act before the Civil Judge, Senior Division, Ghaziabad and submitted that prayer has been made therein by the petitioner for grant of decree for restitution of conjugal rights with the victim respondent. He also relied upon the decision of the Apex Court reported in 2002 (2) P.C.C.R. page 18 in which it has been held that if the girl files an affidavit stating that she was married to the appellant, the institution of a criminal proceeding under Section 366 I.P.C. was fit to be quashed.

5. Learned A.P.P. and learned Counsel for the informant opposed the prayer of the petitioner and submitted that the police after investigation has submitted chargesheet against the petitioner. Learned Counsel for the informant further submitted that the alleged marriage was performed under duress and the girl was minor at that time. The facts appearing in the case relied by the learned Counsel for the petitioner are different from the facts of the present case and so, the decision is not applicable in this case. He further submitted that the statement of the victim girl under Section 164 of the Code (Annexure-4) would show that she was forcibly taken away and was also raped.

6. It appears from the impugned order that chargesheet under Section 366 I.P.C. has been submitted by the police in this case and the learned Magistrate after perusing the chargesheet and the case diary has passed the impugned order. The statement of the victim girl under Section 184 of the Code also shows that she was kidnapped for the purpose of illicit intercourse, therefore, the learned Magistrate was quite justified in passing the impugned order. The above documents relied upon by the petitioner cannot be considered at this stage. The decision of the Hon'ble Supreme Court relied upon by the petitioner does not apply to the facts of this case.

7. So, I do not find any reason to interfere with the impugned order. This application is accordingly dismissed.

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