

IN THE COURT OF PRINCIPAL DISTRICT & SESSIONS JUDGE, MUZAFFARPUR
Civil Court, Muzaffarpur. Bihar.

Criminal Revision No. 56/2026

(BRMZ01- 002419-2026)

1. Subhash Mahto, S/o- Mahendra MahtoRevisionist

Vs

1. The State of BiharOpposite party

For the petitioner : Sri Amrendra Kumar, Advocate.

For the O.P. : Sri Ajay Kumar, Ld. P.P.

(Under Section 438/440 of the BNSS)

<i>Date of order</i>	<i>Order with initials of the Judge.</i>	<i>Remarks.</i>
<u>14.05.2026</u>	1. The record is placed for order. The revisionist has preferred this revision petition being aggrieved and dissatisfied with the order dated 19.05.2022 passed in GR Case No. 2603/2014 in connection with Baruraj PS Case No. 139/2014, by the learned court of J.M First Class, Court No. 05, (West) Muzaffarpur, whereby the learned Magistrate, finding a prima-facie case, took cognizance under section 366, 366(A), read with Section 34 of the IPC and issued summons for appearance of the accused. The revisionist has sought to invoke section 438/440 of B.N.S.S, thus seeking to set aside the impugned order dated 19.05.2022. 2. The factual matrix of the case, leading to the present revision petition is that on 20.08.2014, daughter of the informant namely Rekha Kumari aged about 15 years who was a student of class-X at High School, Semra, was alleged to have been enticed and abducted by the accused petitioner Subhash Mahto, a student of the same school. When her daughter did not return, they started looking for her and, in the process, found out that Subhash Mahto had kidnapped her. 3. After registration of the FIR, the police investigated the case and submitted the final form against the accused Subhash Mahto bearing no. 82/2015 dated 30.06.2015 finding it to be a mistake of fact. owever, the learned J.M.F.C. (West)	

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Muzaffarpur, by its order dated 19.05.2022, took cognizance by differing with the Police report against the accused for the offences u/ss 366, 366(A)/34 of the IPC and issued summon for his appearance.

4. Learned counsel for revisionist-petitioner has assailed the impugned order on the ground that the impugned order is bad in law as well as facts and needs to be set aside. It is further submitted that the impugned order is based on surmises and conjectures. It is further contended that the learned court without considering the facts available in case diary, simply took cognizance against the petitioner in a routine manner which is not sustainable in the eyes of law and is fit to be set aside.

5. On the other hand, learned P.P appearing for the State has submitted that the learned trial court has rightly taken cognizance against petitioner and that the impugned order is legally correct and needs no interference of this court.

6. Now, it is well-settled preposition of law that the order of the Magistrate summoning the accused must reflect that he/she has applied his mind to the facts of the case and the law applicable thereto. The application of mind has to be indicated by disclosure of mind on the satisfaction. [**Mehmood Ul Rehman v. Khazir Mohammad Tunda and others (2015) 12 SCC**]

7. It is also settled proposition that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the allegations in the complaint, when considered along with the statements recorded or the inquiry conducted thereon, would constitute violation of law so as to call a person to appear before the criminal court. It is not a mechanical process or matter of course but a serious matter wherein process of criminal law is set in motion against a person.

8. In **Pepsi Foods Ltd. & Anr. Vs. Special Judicial Magistrate & Ors. (1998)5 SCC 749** it was held by the Hon'ble Apex Court that "Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a

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silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

9. Before proceeding further, a look at the relevant provision becomes imperative. "**Section 366 of the Indian Penal Code (IPC)** addresses the kidnapping, abducting, or inducing of a woman to compel her marriage or force illicit intercourse, whereas **Section 366(A) of the Indian Penal Code** says, "Whoever induces a girl under 18 years old to leave her home, or to move from a place, or to do any act with the intent or knowledge that she may be forced or seduced into illicit intercourse with another person, is guilty of this offence."

10. Today, the Victim Rekha Kumari appeared in person along with the accused and their minor son. She categorically stated that she was not being kidnapped by anybody and she left the house to marry the accused and that they are now living a happy conjugal life.

11. Taking into account the fact that the Police had found the case to be false against the accused and the learned trial Court took cognizance, differing with the police report, without explaining the reason for doing so, by passing an unspeaking order and also not being unmindful of the submissions made by the victim in the Court, the impugned cognizance cum summoning order dated 19.05.2022, passed by the learned court of J.M.F.C court No. 05 (East), Muzaffarpur, is hereby set aside and the present Revision petition is allowed.

12. Accordingly, this revision application stands disposed, in terms of the aforesaid order. A copy of this order be sent to the court concerned.

Sd/-
(Shweta Kumari Singh)
Principal District and Sessions Judge
Muzaffarpur.
14.05.2026