

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.44593 of 2012

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1. Satyendra Thakur S/O Shiv Charan Thakur, R/O Village - Kheman Bigha, P.S. Hilsa, District - Nalanda, at Present A/228, People'S Co - Operative Colony, Kankarbagh, Patna, P.S. Kankarbagh, Patna, P.S. Kankarbagh, District - Patna
 2. Anita Devi W/O Satyendra Thakur, R/O Village - Kheman Bigha, P.S. Hilsa, District - Nalanda, At Present A/228, People's Co - Operative Colony, Kankarbagh, Patna, P.S. Kankarbagh, Patna, P.S. Kankarbagh, District - Patna
 3. Brijnandan Thakur S/O Shiv Charan Thakur, R/O Village - Nesara, P.S. Karai Parsurai, District - Nalanda
 4. Shiv Charan Thakur S/O Shiv Bater Thakur, R/O Village - Nesara, P.S. Karai Parsurai, District - Nalanda
 5. Mahapati Devi W/O Shiv Charan Thakur, R/O Village - Nesara, P.S. Karai Parsurai, District - Nalanda

.... Petitioner/s

Versus

1. The State of Bihar
2. Baby Devi D/O Deep Narayan Thakur R/O Kela Bigha, P.S. Telhara, District - Nalanda

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Prasad
For the Opposite Party/s : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

2 14-05-2015 Heard the parties.

The petitioners have filed the present application under Section 482 Cr. P. C. for quashing the order dated 15.09.2012 passed in Sessions Trial No. 356 of 2011 by the learned 4th Additional Sessions Judge, Hilsa, Nalanda, whereby prayer made by the petitioners in terms of Section 228(1) Cr. P. C. for transferring the case to the court of learned Magistrate, has been rejected on the ground that the offence under Section 376 I.P.C. is made out against co-accused Rakesh Thakur and offence under Section 498A I.P.C. is made out against other accused persons.

Admittedly, the F.I.R. vide Annexure-1, was lodged by



the informant Baby Devi for the offences under Section 498A/376/34 I.P.C. In the F.I.R., vide Annexure-1, the specific allegation of commission of rape is against co-accused Rakesh Thakur. On close of investigation the charge sheet was also submitted for offences under sections 376 and 498A I.P.C. and, accordingly, cognizance was taken. Subsequently, the case was committed to the court of sessions giving rise to Sessions Trial No. 356 of 2011, which is pending in the court of learned 4th Additional Sessions, Hilsa at Nalanda. At the time of framing charge, a petition was filed on behalf of the accused persons under Section 228 Cr. P.C. taking a plea that no case under Section 376 I.P.C. is made out against any of the accused persons, and the case is not exclusively triable by the court of sessions, hence, after framing of charge, the case may be transferred to the court of the learned Chief Judicial Magistrate or any other competent judicial Magistrate for trial of the accused persons.

Learned trial Judge has considered the entire matter and after going through different paragraphs of the case diary particularly paragraphs 2,6,7,8,9,23, 24 and 25 came to the conclusion that the offence under Section 376 I.P.C. is made out. Therefore, he refused to transfer the case to the court of learned Magistrate and rejected the petition filed on behalf of the petitioners.

Under the scheme of the Code of Criminal Procedure, if some offences are made out against some accused persons, which are exclusively triable by the court of sessions, and some other offences are made out against some other accused persons, which are not exclusively triable by the sessions court, but may be tried by the learned Magistrate, yet in that situation also, the entire trial

of all the accused persons is required to be conducted by one court, i.e. the Sessions court, though charges shall be framed against each accused persons as per the materials available on record. That being the legal position, this Court does not find any good ground to interfere with the impugned order dated 15.09.2012 passed in Sessions Trial No. 356 of 2011 by the learned 4th Additional Sessions Judge, Hilsa, Nalanda.

Hence, the present application has to fail and is, accordingly, dismissed.

(Birendra Prasad Verma, J)

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