

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.31557 of 2015

Arising Out of PS.Case No. -622 Year- 2014 Thana -KANTI District- MUZAFFARPUR

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1. Md. Chand.
2. Abdullah.
3. Azharuddin.
All Sons of Md. Maksood, r/o village Nagari, P.S. Kanti, Di Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

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Appearance:

For the Petitioner/s : Mr. Anish Kumar, Adv.

For the Opposite Party/s : Mr. Upendra Kumar(App)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

3 15-10-2015 Heard learned counsel for the petitioners, learned Additional Public Prosecutor as well as learned counsel for the informant.

Petitioners along with informant who occupy common house and are on litigating term on account of partition, carry an allegation at the behest of informant that on the alleged date and time of occurrence all the petitioners along with two unknown pounced upon her, pull her cloth and then committed rape. During course thereof, petitioner no.3 took away earring as well as petitioner no.2 Rs.3000/-.

Perused the case diary.

It has been submitted on behalf of petitioner that P.O. lies only 11 K.M. away from the P.S., even then the informant ignoring the same had gone to the Superintendent of Police purposely as well as intentionally to avoid early investigation as same would have



revealed falsity of the case which could have on account of objective finding relating to P.O. as well as by way of opinion of doctor which certainly negatived the plea. Having delay, gave a chance to prosecution to obmutescence. Otherwise, it is ridiculous to convince that petitioners, who happens to be 'Jaut' indulged in such kind of activity. On account thereof, there happens to be complete absence of evidence. The daughter of informant, who had stated that at the relevant time she had gone to neighbour's house would not be relied upon in the background of fact that she had not named the neighbour's where she had gone nor the neighbour came forward to say. Apart from this, after conclusion of the investigation, the Investigating Officer had not found it a case of 376 IPC and on account thereof, charge sheet was submitted under sections 341,323,503,354/34 of the IPC. Furthermore, it has also been submitted that there happens to inconsistency in between statement of informant under Section 161 Cr.P.C as well as 164 Cr.P.C.

At the other end, the learned Additional Public Prosecutor assisted by learned counsel for the informant opposed the prayer and submitted that in a rape case, the statement of the victim is of paramount consideration however, fairly concedes with regard to discrepancy having in between statement recorded under Section 161 Cr.P.C. whereunder had identified these petitioners along with two others (not named) to be the rapist while under Section 164 Cr.P.C. she had not claimed identification of any of the petitioners. It has also been submitted that apart from aforesaid infirmities, cognizance was taken under Section 376 IPC and on the basis thereof, charge against the petitioners have been framed under Section 376 IPC.

Taking into account the discrepancy in the statement recorded under Section 161 Cr.P.C. as well as 164 Cr.P.C. at the end of informant /victim, petitioners Md. Chand, Abdullah, Azharuddin each are directed to be released on bail on furnishing bail bonds of Rs.10,000/-(ten thousand) with two sureties of the like amount each, to the satisfaction of learned S.D.J.M. (West), Muzaffarpur in connection with Kanti P.S. Case No.622 of 2014. However, it is made clear that in case there happens to be allurement, coercion or threat at the end of petitioners over informant, then in that event, prosecution will be at liberty to take proper recourse in accordance with law.

(Aditya Kumar Trivedi, J.)

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