

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.10739 of 2013

Arising Out of PS.Case No. -109 Year- 2012 Thana -RAMKRISHNANAGAR District- -

1. Balroop Prasad S/O Late Hari Prasad Singh Resident Of Village- Nandlal Chapra, P.S.- Ramkrishna Nagar, District- Patna
2. Rekha Devi W/O Balroop Prasad Resident Of Village- Nandlal Chapra, P.S.- Ramkrishna Nagar, District- Patna

.... Petitioner/s

Versus

1. The State Of Bihar
2. Gyanti Devi W/O Goutam Rai Resident Of Mohalla- Nandlal Chapra, P.S.- Ramkrishna Nagar, District- Patna

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Subodh Kumar Jha, Adv.
Mr. Bal Krishna Mishra, Adv.
Mr. Pranav Kumar Jha, Adv.
For Opposite Party No.2 : Mr. Nawal Kishore Prasad, Adv.
For the State : Mr. Ansarul Haque, APP.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 07-07-2015

The petitioners have filed the present application under section 482 of the Code of Criminal Procedure (for short 'the Code') for quashing the entire criminal prosecution as well as the order taking cognizance dated 13.12.2012 in connection with Ramkrishna Nagar P.S.Case No.109 of 2012 instituted under sections 376/511 of the Indian Penal Code (for short 'IPC') read with section 3(1)(x) and (xi) of the Scheduled Castes and the Scheduled Tribes (Prevention Of Atrocities) Act, 1989 (for short 'SC/ST Act') pending in the court of Judicial Magistrate 1st Class, Patna. The aforesaid police case was

instituted against the petitioners and their son Sanni Kumar under the aforesaid sections on 05.09.2012 on the basis of written report submitted by the informant (Opposite Party No.2) to the Officer-in-Charge, Ramkrishna Nagar Police Station.

2. It has been alleged by the opposite party no.2 in the written report that on the alleged date of occurrence i.e. on 02.09.2012 at about 12 noon when the daughter of the informant, namely, 'K' aged about 8 years and another girl, namely, 'P', who is daughter of one Manoj Prasad, were playing with the son of the petitioners, namely, Sanni Kumar. He took the aforesaid girls in a room and made them naked. He started teasing them and touching their private parts. Thereafter, both the girls started crying. The son of the petitioners threatened them not to speak about the incident to any one and when the informant came back, she came to know about the incident and when she made a complaint in this regard to the petitioners, they told that they would ask from their son about the incident and take appropriate action. However, when the informant again approached them to know as to whether they had asked about the incident from their son, they became angry and abused her by taking name of her caste as "Chamainiya". The police investigated the case and found the case true against the son of the petitioners, namely, Sanni Kumar but the accusation as against the petitioners was found to be false.



Accordingly, Report No. 113 of 2012 dated 31.10.2012 was submitted before the court under section 173 of the Code in which out of three accused persons named in the FIR, it was only the accused Sanni Kumar, who was sent up for trial. However, the learned Magistrate vide impugned order dated 13.12.2012 differed with the police report and took cognizance of the offences punishable under sections 376/511 IPC and section 3(1)(x) and (xi) of the SC/St Act against all the accused including the two petitioners and summoned them to face trial.

3. Learned counsel for the petitioners has submitted that though the alleged occurrence dated 02.09.2012 took place in the township of Patna at a distance of hardly 6 kms. away from the Police Station but the FIR was lodged on 05.09.2012 i.e. after three days of the occurrence, which appears to be an afterthought. He has further submitted that the reason for false implication is that petitioner no.2 is running a shop in front of gate of one Tapeswar Yadav in whose house opposite party no.2 resides as a tenant. She had taken certain articles on credit. He has contended that it has come during investigation in several paragraphs of the case diary that the opposite party no.2 wanted to purchase articles from the shop of petitioner no.2 on credit, which was refused by her, as a result of which she became furious and got a malicious FIR instituted against the



petitioners. It has been further contended that so far as the petitioners are concerned, no case is made out against them under sections 376/511 IPC and there is no material either in the FIR or in the case diary to show that when the informant went to make complaint to the petitioners she was intentionally insulted or intimidated by the petitioners within public view. He has further contended that there is no allegation that the petitioners assaulted or used force to the informant or her daughter with intent to dishonour or outrage their modesty and hence the ingredients of the offence punishable under section 3(1)(x) and (xi) of the SC/ST Act are not attracted against them.

4. On the other hand, learned counsel for the State has submitted that at the stage of cognizance only prima facie case is to be seen and at this stage meticulous analysis of the evidence is not permissible. He has contended that on the basis of the statements recorded in paragraphs 3, 7 and 9, the learned Magistrate has differed with the police report and summoned the petitioners too, who were not sent up for trial by the police.

5. Learned counsel for the opposite party no.2 has submitted that though there is no allegation of attempt to commit rape against the petitioners, they failed to take any action against their son for the alleged indecent act. He has further contended that there is specific

allegation against the petitioners that they abused the informant by calling her “Chamainiya” and “Harijanwa” when she went to register the complaint against their son. He, thus, submits that the offence punishable under section 3(1)(x) and (xi) of the SC/ST Act is clearly made out against the petitioners and there is no illegality in the impugned order dated 13.12.2012 passed by the learned Magistrate.

6. I have heard the respective counsel for the parties and perused the case diary summoned by this Court vide order dated 02.04.2015.

7. It is an admitted fact that there is no allegation against the petitioners that they either abated the offence committed by their son or in any way they were having any knowledge that their son Sanni Kumar had misbehaved or outraged the modesty of the two minor girls or had attempted to rape them. In that view of the matter, there is no difficulty in coming to the finding that the petitioners cannot be prosecuted for the offences under sections 376/511 IPC.

8. The other offences under which cognizance has been taken by the learned Magistrate are under section 3(1)(x) and 3(1)(xi) of the SC/ST Act.

9. Section 3(1)(x) and (xi) of the SC/ST Act reads as under :-

“3. (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

(i) xxxx xxxx xxxx



(ii)	XXXX	XXXX	XXXX
(iii)	XXXX	XXXX	XXXX
(iv)	XXXX	XXXX	XXXX
(v)	XXXX	XXXX	XXXX
(vi)	XXXX	XXXX	XXXX
(vii)	XXXX	XXXX	XXXX
(viii)	XXXX	XXXX	XXXX
(ix)	XXXX	XXXX	XXXX

(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

(xi) assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty.”

10. A reading of section 3(1)(x) of the SC/ST Act would show that there has to be intentional insult or intimidation with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view. From a careful reading of the FIR, I find that the place of occurrence given out in the written report is the house of the petitioners. I further find that the three paragraphs on which the learned Magistrate has placed reliance for differing with the police report contain statements of Gayatri Devi (informant), Pinki Devi (mother of ‘P’, one of the victims) and ‘P’, the other victim. None of them has stated that the petitioners abused the informant by calling the name of her caste in derogatory manner in a place within public view. Further, from perusal of paragraph 9 of the case diary in which statement of one of the victims has been recorded,



it is clear that abusive words were used by the petitioners inside the house when the informant had visited their house to register complaint. Thus, I find that there is no material on record to show that the petitioners intentionally insulted or intimidated with intent to humiliate the opposite party no.2 in a place within public view. Hence I am of the opinion that the ingredients of the offence punishable under section 3(1)(x) of the SC/ST Act are not attracted against the petitioners.

11. Further, reading of section 3(1)(xi) shows that to constitute an offence under the said provision, there has to be either assault or use of force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty. It is not the case of the prosecution that the petitioners either assaulted or used force with intent to dishonour or outrage the modesty of the informant. In that view of the matter, the ingredients of the offence alleged under section 3(1)(xi) of the SC/ST Act are not attracted as against the petitioners.

12. Having considered the facts of the case, materials available on record and after going through the contents of the case diary, I am of the opinion that no prima facie case is made out against the petitioners as the basic ingredients of the offences alleged are missing against them. For the reasons recorded hereinabove, allowing

the prosecution of the petitioners to continue would be an abuse of the process of the court.

13. Accordingly, the impugned order dated 13.12.2012 passed by the learned Judicial Magistrate 1st Class, Patna in connection with Ramkrishna Nagar P.S.Case No.109 of 2012 is quashed only to the extent by which cognizance has been taken against the petitioners.

14. The application is allowed to the extent indicated above.

(Ashwani Kumar Singh, J)

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