

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.43869 of 2012

- =====
1. Deepak Kumar Pandey S/O Brajesh Pandey, Resident of Village- Deo, P.S.- Sikarhatta, District- Bhojpur
 2. Jitendra Pandey S/O Sidhnath Pandey, Resident of Village- Deo, P.S.- Sikarhatta, District- Bhojpur

.... Petitioner/s

Versus

1. The State of Bihar
2. Kanchan Devi W/O Kamlesh Singh Resident Of Village- Deo, P.S.- Sikarhatta, District- Bhojpur

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Madan Jeet Kumar

For the Opposite Party/s : Mr. Satyendra Nr. Singh, APP

=====

CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

2 16-04-2015

Heard the parties.

The petitioner is aggrieved by the order dated 02. 04. 2012 passed in Sikarhatta P.S. Case No. 62 of 2011, corresponding to Tr. No. 5146 of 2012 by the learned Chief Judicial Magistrate, Bhojpur, whereby he has taken cognizance under Section 376/34 of the Indian Penal Code and the case has been transferred to the learned Judicial Magistrate for its commitment.

It is not in dispute that both the petitioners are named in the F.I.R. vide Annexure-1 as accused and both of them, apart from another, are alleged to have committed rape upon the informant. The informant was examined under Section 164 Cr. P.C., where also she has supported the factum of commission of rape.

Learned counsel appearing on behalf of the petitioners submits that on close of investigation, police had submitted final report on 22.10.2011 and the petitioners were not charge-sheeted.

According to him, on examination by the doctor no sign of rape was found on the person of the prosecutrix. Therefore, according to him, learned Chief Judicial Magistrate was not justified in disagreeing with the police report and taking cognizance of the offence under Section 376/34 I.P.C.

Learned Addl. P. P. appearing on behalf of the State has opposed the prayer and has supported the impugned order passed by the learned Chief Judicial Magistrate taking cognizance. According to him, the learned Chief Judicial Magistrate has recorded sufficient and sound reasons for such disagreement by referring to materials available on the record.

It is well settled that in a criminal case learned Magistrate is fully empowered to disagree with the police report and take cognizance if materials are available for commission of crime. In the present case, both the petitioners are specifically named in the F.I.R. as accused and they are alleged to have committed the crime of rape. The victim has supported the prosecution case even in her statement recorded under Section 164 Cr. P.C. On the ground of absence of injury on the person of prosecutrix alone the whole criminal prosecution cannot be thrown out. It can be looked into at the stage of trial and not at this stage for the purpose of taking cognizance.

For the reasons recorded above, this Court is not inclined to interfere with the impugned order.

In the result, this application has to fail and is, accordingly, dismissed.

(Birendra Prasad Verma, J)

BTiwary/-

U			
---	--	--	--