

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.2531 of 2016

Arising Out of PS.Case No. -10 Year- 2014 Thana -COMPLAINT CASE District- SHEOHAR

- =====
1. Alok Mishra @ Alok Kumar @ Alok Kumar Mishra S/o Kashi Kant Mishra, R/o Vill.- Mohanpur, Manihari, P.S.- Piprahi, District- Sheohar
 2. Abhiram Kumar Mishra @ Abhiram Kumar S/o Kashi Kant Mishra, R/o Vill.- Mohanpur, Manihari, P.S.- Piprahi, District- Sheohar
 3. Kashi Kant Mishra S/o Late Yogendra Mishra, R/o Vill.- Mohanpur, Manihari, P.S.- Piprahi, District- Sheohar

.... Petitioner/s

Versus

1. The State of Bihar
2. Mani Devi, W/o Ram Bhajan Mandal, R/o Vill.- Mohanpur, Manihari, P.S.- Piprahi, District- Sheohar

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Anil Kumar Tiwary

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

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL ORDER

2 26-08-2016 Heard Sri Ashok Chaudhary, learned counsel assisted by Sri Anil Kumar Tiwary, learned counsel for the petitioners and Sri Anil Kumar, learned A.P.P.

Three petitioners, have approached this court invoking its inherent jurisdiction under section 482 of the Code of Criminal Procedure with a prayer to quash an order dated 13.7.2015 passed by learned Sessions Judge, Sheohar in Sessions Trial No. 58 of 2015. By the said order charge against the petitioner no. 1 was



framed under section 376 of the Indian Penal Code and so far petitioner no. 2 and 3 are concerned charge has been framed under section 323, 354, 504/ 34 of the Indian Penal Code. It was submitted by learned counsel for the petitioners that there was no any element to apply section 376 of the Indian Penal Code in the facts and circumstances of the present case. It was submitted that sexual intercourse of complainant with the petitioner no. 1 was done with consent with willingness and as such in view of the law laid down by the Apex Court in **(2013) 7 SCC 675 (DEEPAK GULATI Versus STATE OF HARYANA)** the entire proceeding is liable to set aside. He has further relied on a judgment of the Apex Court reported in **(2006) 4 SCC 359 (MINU KUMARI AND ANOTHER Versus STATE OF BIHAR AND OTHERS)** on the point that under section 482 of the Cr.P.C. this Court has got ample jurisdiction to interfere in a case where there is apparent abuse of the process of law. On the aforesaid grounds a prayer has been made to quash the impugned order.

Fact remains that in this case charge has already been framed. Meaning thereby that trial has already commenced. The Court is of the opinion that if in a criminal case trial has already commenced this Court should refrain from exercising inherent

jurisdiction. Accordingly I do not find any ground to interfere with the order of framing charge.

The petition stands dismissed.

(Rakesh Kumar, J)

Praful/-

U		T	
---	--	---	--