

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.22329 of 2013

Arising Out of PS.Case No. -115 Year- 2008 Thana -DALSINGHSARAI District- SAMASTIPUR

- =====
1. SWARAJ PASWAN S/O LATE JAGAT PASWAN R/O VILLAGE-
KHAJAUTIYA, P.S.-GHATHOO, DISTRICT- SAMASTIPUR
 2. SANJAY KUMAR MEHTA S/O RAM CHANDRA MAHTO R/O
VILLAGE- KHAJAUTIYA, P.S.-GHATHOO, DISTRICT-
SAMASTIPUR

.... PETITIONER/S

VERSUS

THE STATE OF BIHAR

.... OPPOSITE PARTY/S

=====

Appearance:

For the Petitioner/s : Mr. Akhileshwar Pd. Singh, Sr. Adv.
Mr. Binit Kumar, Adv.

For the Opposite Party/s : Mr. Ashok Kr. Singh (App)

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

2 06-04-2016 Heard learned counsel for the petitioners as well as

learned Additional Public Prosecutor.

Petitioners are aggrieved by an order dated
30.01.2013 whereby and whereunder the learned lower court of
Additional Sessions Judge, Ist, Samastipur rejected the prayer of
the petitioners under Section 227 of the Cr.P.C. in connection with
Sessions Trial No.424 of 2011, (State Vs. Swaraj Paswan & Anr.)

Learned counsel for the petitioner submits that
absolutely there happens to be no evidence against the petitioners
to justify his prosecution. To substantiate the same, it has been
submitted that after so many days of alleged occurrence a
complaint was filed which was sent to the concerned police station



for registration and investigation whereupon Dalingsarai P.S. Case No.115 of 2008 was registered. During course of investigation, have supported the case of the prosecution. Even complainant herself declined to have medical test, therefore, final report was submitted. Though, after accepting the same learned Chief Judicial Magistrate proceeded over protest petition and after conducting an inquiry, summoned the petitioners to face trial however, those evidences also did not rope the petitioners in order to justify their prosecution. Accordingly, the order impugned is fit to be set aside.

The learned Additional Public Prosecutor opposed the prayer.

In terms of Section 227 of the Cr.P.C., the court is required to hear both the parties, see the materials available on the record and further, to perceive whether those materials are sufficient for prosecution. That means to say presence of material to justify framing of charge against an accused is only criteria to be seen at the stage of Section 227 of the Cr.P.C. In case, there happens to be deficiency, then in that event the accused is to be discharged otherwise prosecution has to commence by way of framing of charge under Section 228 which also speaks about other eventualities.

By way of supplementary affidavit petitioners have annexed the S.A., statement of the witnesses under Annexure-5 Series. From the S.A. it is apparent that informant/complainant categorically stated identifying Swaraj Paswan and Sanjay Mehta to have committed rape repeatedly after letting her to a hut. The occurrence happens to be of night and she was lifted by the accused persons. During cross-examination by court she had stated that none had seen the occurrence. Certainly when the occurrence was inside the lonely hut one cannot expect presence of eye witnesses. Remaining two witnesses PW-2 and PW-3 have corroborated statement of victim and so, for the present there happens to be sufficient material to proceed with the trial.

The points whatever been raised at the present moment would be available to the petitioners during course of trial which they may advance and substantiate. However, it is made clear that during course of trial the learned lower court would not found influenced by the instant order.

Instant petition is accordingly found devoid of merit and is rejected.

(Aditya Kumar Trivedi, J.)

PN/-

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