

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.18087 of 2016

Arising Out of PS.Case No. -99 Year- 2015 Thana -ALAMGANJ District- PATNA

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1. Sarvesh Prakash @ Sonu S/o Jay Prakash Gupta
2. Jay Prakash Gupta, S/o Late Ram Sahai Sah, Both residents of Mohalla-
Chailitand, Near Mahavir Temple, Police Station- Alamganj, District-
Patna.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.B.P.Pandey, Sr. Advocate
Mr.Nirbhay Prashant, Advocate.

For the Opposite Party/s : Mr. Rana Randhir Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR
TRIVEDI
ORAL ORDER

5 19-10-2016 Heard learned counsel for the petitioners as well as
learned A.P.P. for the State.

Petitioners are aggrieved by an order dated
28.01.2016 whereby and whereunder the learned lower court took
cognizance of an offence punishable under Sections 376, 379 and
504 of the Indian Penal Code and further, summoned the
petitioners.

The learned counsel for the petitioners submitted
that from plain reading of the written report which happens to be
in the pen of the prosecutrix herself did not specify whether the
physical relationship having amongst the parties was forcibly

consummated or was consummated under deceitful will, hence no offence under Section 376 of I.P.C. is made out.

Proper application of section whereunder accused is to prosecuted is to be perceived at the stage of the trial ordinarily. The framing of charge is not at all guided by the order of cognizance. Consequent thereupon, petitioner has nothing to fear that as cognizance has been taken under Section 376 of the I.P.C. along with other allied sections, therefore, the charge in its consequence will also follow. As stated above, both have got two independent application of judicial mind and further, is not at all permitted to overlap.

With the aforesaid observation, instant petition is disposed of.

(Aditya Kumar Trivedi, J)

AnilKrSinha/-

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