

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No. 14582 of 2016

Arising out of P.S. Case No. - 20 Year - 2015 Thana - MAHILA P.S. District - MADHUBANI

=====

Rajiv Prasad Chaurasia @ Rajiv Kumar, S/o Sri Digambar Prasad @ Sri Digambar Prasad Chaurasia, Resident of Village - Rakhbari, P.S. - Rudrapur, District - Madhubani

.... Petitioner

Versus

1. The State of Bihar.
2. Yamoo Kumari @ Yamu, D/o Sri Gauri Shankar Bhagat, Resident of Village - Parsa Bazar, Nathupur Road, Post - Parsa, District - Patna

.... Opposite Parties

=====

Appearance :

For the Petitioner : Mr. Chandra Mauli Chaurasia, Advocate

For the O.P. No. 2 : Mr. Alok Kumar Sinha, Advocate

For the State : Mr. Shyam Kumar Singh, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 16-02-2017

Heard the learned counsels for the parties.

2. The petitioner is an accused in connection with, Madhubani (Mahila) Police Station Case No. 20 of 2015 corresponding to G.R. No. 1090 of 2015, a case under Section 376 and 506 of the Indian Penal Code brought by opposite party no. 2 Yamoo Kumari.

3. The petitioner has challenged the cognizance order dated 02.02.2016 on the ground that no offence under Section 376 Indian Penal Code is made out on bare perusal of the allegation petition. According to FIR, the informant Yamoo Kumari developed intimacy with the petitioner after contact through Internet Shadi.com. Thereafter



through Whats app conversation both liked each other. On the assurance of this petitioner for marriage, the informant sent her brother-in-law Pankaj Kumar Chaurasia to the petitioner for further negotiations. Both sides talked positively. Though marriage negotiation was going on, the petitioner met the informant and stayed in her room and the petitioner put vermilion on the head of the informant and thereafter both were in physical relation as husband and wife for two to three days. Both went to watch film and shopping. All these happened at Delhi. Thereafter again on 23rd June, 2014, the petitioner took the informant to a hotel at Patna. This time also they were in physical relation. When the maternal uncle and brother-in-law of the informant went along with proposal for marriage on 4th July, 2014, the family members of the petitioner objected the marriage on the ground that the informant has no acceptable nose. Thereafter informant went on with plastic surgery in spite of that marriage could not be solemnized, publicly. Though, it was already solemnized in the temple as claimed by the informant.

4. Submission of the petitioner is that the entire averment in the FIR would show that this is a matter of consensual sex



between the two majors. The medical report of the informant reveals that she was aged about 20 years and physical relation was with consent. Moreover, the informant has filed Maintenance Case No. 154 of 2015 in the court of learned Principal Judge, Family Court, Madhubani against the petitioner for maintenance claiming that she is married wife of the petitioner since 4th June, 2014, therefore, cognizance under Section 376 Indian Penal Code is an abuse of the process of the court based on no material.

5. On the other hand, learned counsel for the opposite party no. 2 submits that such submission may be considered at the stage of framing of charge. He further submits that offence of cheating is there because the petitioner induced her for marriage and the inducement of the petitioner caused the informant to part with such a valuable property which cannot be compensated in terms of money.

6. Section 375 Indian Penal Code defines the term rape as follows:-

“375. Rape.----- A man is said to commit “rape” if he ----

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or



- (b) *inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or*
- (c) *manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or*
- (d) *applies his mount to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,*
under the circumstances falling under any of the following seven descriptions:-

First. ---- Against her will.

Secondly. ---- Without her consent.

Thirdly. ---- With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

Fourthly. ---- With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly. ---- With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly. ---- With or without her consent, when she is under eighteen years of age.

Seventhly.---- When she is unable to communicate consent.”

7. After hearing the parties, in my view, apparently, no



offence under Section 376 Indian Penal Code is made out on the basis of material disclosed in the First Information Report, therefore, cognizance under Section 376 Indian Penal Code is quashed. However, at the stage of framing of the charge, the informant shall be at liberty to raise her grievance as to what other offence is made out for framing charge on the basis of material on the record.

8. The impugned order is partly set aside and this application is partly allowed.

(Birendra Kumar, J)

Kundan

AFR/NAFR	N.A.
CAV DATE	N.A.
Uploading Date	23.02.2017
Transmission Date	23.02.2017

