

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.31701 of 2014

Arising Out of PS.Case No. -245 Year- 2005 Thana -COMPLAINT CASE District- KISANGANJ

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Varuna Kumari @ Varuna Sinha, W/o Rajiv Kumar, R/o Mohalla - Daudpur Kothi,
P.S.- Brahampur, District- Muzaffarpur

.... Petitioner

Versus

1. The State of Bihar
 2. Archana Sinha, D/o late Shivanand Prasad, W/o Aditya Kumar Sinha, Permanent resident of Rahika Tola, Ward No.-12, P.S. Araria at Araria
- Opposite Parties.

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Appearance:

For the Petitioner/s : Mr. Sanjeev Ranjan, Advocate.
For the Opposite Party/s : Mr. A.L. Pandit, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 09-10-2017

Heard learned counsel for the petitioner and learned A.P.P.
representing the State.

2. No one appears for the opposite party no. 2 despite service of notice on the opposite party no. 2 as per the service report kept at Flag 'X'.

3. The petitioner, in the present case, is seeking quashing of the order dated 18.06.2014 passed in Complaint Case no. 245/05 in Tr. No. 941/2014 by which the learned Magistrate 1st Class, Kishanganj has rejected the application under Section 245 of the Code of Criminal Procedure filed on behalf of the accused-petitioner for discharge.

4. At first instance, learned counsel for the petitioner



attempted to impress upon this Court that the learned Magistrate has rejected the application not by considering the evidence of the witness produced before charge but by looking into the deposition of the witness who had deposed at the enquiry stage under Section 202 Cr.P.C. which, according to him, was not a correct approach and is also in the teeth of the judgments of the Hon'ble Supreme Court reported in **(2013) 9 SCC 209 (Sunil Mehta & Anr. Vs. State of Gujarat & Anr.)** and **(2015) 11 SCC 769 (Pritam Ashok Sadaphule & Ors. Vs. State of Maharashtra & Anr.)**, but on perusal of the impugned order dated 18.06.2014, this Court noticed that the learned Magistrate has rejected the application only on being satisfied that the deposition of the only witness produced for evidence before charge disclosed sufficient materials to frame charge against the accused-petitioner. In fact, in the impugned order the learned Magistrate has not referred the deposition of the witnesses under Section 202 Cr.P.C., therefore, the submission advanced on behalf of the petitioner is not fit to be accepted and this Court accordingly rejects the same.

5. Learned counsel for the petitioner next attempted to submit that the evidence before charge in the form of deposition of the witness, which is available on the record brought by him with the supplementary affidavit, would not indicate that there are sufficient materials satisfying the ingredients of the offences alleged and,



therefore, the rejection of the application by the learned Magistrate was not just and proper.

6. This Court has perused the record particularly the deposition of the witness in the form of evidence before charge and on perusal thereof the Court is satisfied that there being a specific statement naming the present petitioner as one of the persons besides the husband, who was demanding a motorcycle, the ingredient of the offence alleged was available to frame the charge against the accused-petitioner.

7. The judgments cited on behalf of the petitioner, which have been taken note of here-in-above, were rendered in a totally different fact situation, which are not available in the present case, therefore, both the judgments will not come to the rescue of the petitioner.

8. The application has no merit. It is accordingly dismissed.

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
CAV DATE	N/A
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