

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.25189 of 2016

Arising Out of PS.Case No. -307 Year- 2015 Thana -GAYGHAT District- MUZAFFARPUR

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Bhuwaneshwar Kuwar @ Bhuneshwar Kuwar son of Late Yogendra Kuwar
Resident of village Chorniya, P.S. Gaighat, District Muzaffarpur.

.... Petitioner/s

Versus

The State of Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Pradeep Narain Kumar, Advocate

For the Opposite Party/s : Mr. U.L.Verma(App)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 27-04-2017 Heard learned counsel for the petitioner and Mr. J.N.

Thakur, learned APP for the State.

The present application has been filed for quashing of the order dated 16.02.2016 passed by the learned Judicial Magistrate 1st Class, Muzaffarpur in connection with Gaighat P.S. Case No. 307 of 2015, G.R. No. 6288 of 2015 wherein process have been directed to be issued after cognizance being taken for the offences punishable under Sections 323,341,308, and 504 of the Indian Penal Code.

Initially FIR was registered under Sections 341,323,324,307,376/ 511 of the Indian Penal Code with accusation that on 06.12.2015 at 6 a.m, when the informant was going to ease out the petitioner, Bhuwneshwar Kuwar caught hold the informant, pushed her down on earth and tried to commit rape. On cry her husband Sukhnandan Sah, and sister-in-law, Runa



Devi, came to rescue then the petitioner assaulted them by Farsha causing injury.

However, during the investigation the accusation under Sections 376/511 of the Indian Penal Code has not been found true and the charge sheet has been submitted only under Sections 341,323,308 and 504 of the IPC and consequently the order of cognizance has been passed whereby cognizance has been taken under Sections 323,341,308 and 504 of the IPC.

It is settled proposition of law that while exercising the jurisdiction under Section 190(1)(b) of the Cr.P.C, the Magistrate has only to see that *prima facie* case is made out. The Magistrate while exercising jurisdiction under Section 190(1) (b) had advantage that he has the police report submitted under Section 173(2) of the Cr.P.C. At this stage, the order of cognizance can only be interfered with when it suggests lack of application of Judicial mind. This Court does not find any infirmity in the order impugned.

Accordingly, the application is disposed of with liberty to the petitioner to raise all the contentions at the appropriate stage of proceeding.

(Dinesh Kumar Singh, J)

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