

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.5523 of 2017

Arising Out of PS.Case No. -67 Year- 2015 Thana -MAHILA PS District- JAMUI

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Binod Kumar, Son of Jung Bahadur, Resident of Mohalla- Bari Khagaul (Near Shiv Mandir), P.O. + P.S.- Khagaul, District- Patna, Presently working as Loco Pilot in the Office of Divisional Railway Manager, Eastern Railway Asansol and presently residing at Rail Par, Ram Krishna Dangal, (near New Chandan Jewellers) P.O. + P.S.- Asansol, District- Burdwan, West Bengal.

.... Petitioner/s

Versus

The State of Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Pandey No-5

For the Opposite Party/s : Mr. Sri Arun Kumar Pandey

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

02/ 19-05-2017

Heard learned counsel for the petitioner and Mr. J.N.

Thakur, learned counsel for the State.

The present application has been filed for quashing the order dated 24.10.2016 passed by learned Sub-divisional Judicial Magistrate, Jamui in Jamui Mahila P.S. Case No. 67 of 2015, whereby process has been directed to be issued after cognizance being taken for the offences punishable under Sections 376 and 493 of the Indian Penal Code.

The prosecution case is that the petitioner ravished the informant on 25.07.2014 and thereafter continued to establish physical relationship on promise of marriage.



It is submitted by learned counsel for the petitioner that the petitioner is a Railways employee, hence, the informant put pressure on the petitioner for marriage of her niece and when the petitioner refused the present case has been lodged, though, the informant is a married lady.

In view of this Court, at the stage of exercising jurisdiction under Section 190(1)(b) the Court has only to see, prima facie case. The impugned order reflects that the learned Magistrate has applied his judicial mind. It appears from the impugned order that it was passed after going through the case diary and final form. At the stage of exercise of jurisdiction under Section 190(1)(b) Cr.P.C. it is not for the learned Magistrate to look into the defence version. A useful reference may have to the case of State of Orissa Vs. Devendra Nath Padhi (2005) 1 Supreme Court Cases 568. Paragraph nos. 18 and 23 reads as follows:

“18. We are unable to accept the aforesaid contention. The reliance on Articles 14 and 21 is misplaced. The scheme of the Code and object with which Section 227 was incorporated and Sections 207 and 207 (A) omitted have already been noticed. Further, at the stage of framing of charge roving and fishing inquiry is impermissible. If the contention of the accused



is accepted, there would be a mini trial at the stage of framing of charge. That would defeat the object of the Code. It is well-settled that at the stage of framing of charge the defence of the accused cannot be put forth. The acceptance of the contention of the learned counsel for the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. By way of illustration, it may be noted that the plea of alibi taken by the accused may have to be examined at the stage of framing of charge if the contention of the accused is accepted despite the well settled proposition that it is for the accused to lead evidence at the trial to sustain such a plea. The accused would be entitled to produce materials and documents in proof of such a plea at the stage of framing of the charge, in case we accept the contention put forth on behalf of the accused. That has never been the intention of the law well settled for over one hundred years now. It is in this light that the provision about hearing the submissions of the accused as postulated by Section 227 is to be understood. It only means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith



and nothing more. The expression 'hearing the submissions of the accused' cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the state of framing of charge hearing the submissions of the accused has to be confined to the material produced by the police.

“23. As a result of aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. Satish Mehra's case holding that the trial court has powers to consider even materials which accused may produce at the stage of Section 227 of the Code has not been correctly decided.”

In view of the above discussion, this application is disposed of with liberty to the petitioner to raise all the contentions at appropriate stage of proceeding.

(Dinesh Kumar Singh, J)

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