

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.54020 of 2013

Arising Out of PS.Case No. -283 Year- 2012 Thana -KADMA District- KATIHAR

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Jinni Khatoon, wife of Md. Rajibul, r/o village- Taiyabpur, Tola Baigachi, P.S.
Kadwa, District- Katihar

.... Petitioner/s

Versus

1. The State Of Bihar
2. Mushfique, son of Mainuddin,
3. Manowar, son of Asud
4. Juned, son of late Shakur Mohammed
5. Ali Abbas, son of Masud
6. Firoz, son of late Shakur Mohammed
7. Asud, son of late Suleman
8. Masud, son of late Suleman
9. Khalique, son of Sagir
10. Afsana Khatoon, wife of Khalique,

Opposite party No. 2 to 11 are resident of village- Taiyabpur, Bairgachhi Tola, P.S.
Kadwa, District- Katihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Md. Helal Ahmad, Advocate.

For the Opposite Party/s : Mr. Shyam Kumar Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 04-10-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 5.9.2013 passed by the learned Chief Judicial Magistrate, Katihar, in Kadwa P.S. Case No. 283 of 2012 by which the learned Magistrate took cognizance against the petitioners and another for the offences under Sections 341, 323 and 376/34 of the Indian Penal Code.

2. Heard learned counsel for the petitioners and learned counsel for the State as well as learned counsel for the opposite parties No. 2 to 10.

3. It has been submitted on behalf of the petitioners that



during investigation, the victim girl has supported her case before the police. She has also supported her case in her statement recorded under Section 164 Cr. P.C. Thereafter, the Dy. S.P. and S.P. in their supervision note, have directed for filing of charge sheet in this case, but on the direction of DIG as mentioned in paragraph-37 of the case diary, the Investigating Officer submitted Final Form stating the case false. The court below by the impugned order has accepted the Final Form and ordered to proceed on the protest petition filed by the complainant.

4. The counsel for the opposite parties No. 2 to 10 has appeared and submitted that the court below has already proceeded in the case on the basis of protest and witnesses have also been examined on behalf of the complainant under Section 202 Cr. P.C. which is apparent from the report received from court below kept at Flag 'R'.

5. The court below has mentioned in the report that three enquiry witnesses have been examined on behalf of the complainant under Section 202 Cr. P.C. and vide order dated 11.06.2015, the evidence of enquiry witnesses has been closed and the case is fixed for hearing.

6. In this manner, from the report of the court below, it appears that no Final order has been passed on the basis of enquiry done by the court on the basis of protest petition.

7. This Court after looking into the impugned order finds that court below without application of mind, merely on the basis of charge sheet submitted by the police on the instruction of DIG, has accepted Final Form and directed to proceed on the basis of protest petition. There was



material available in the case diary on the basis of statement of witnesses recorded by the police during investigation. The Supervising authorities have also found the case true as mentioned in paragraph-24 of the case diary. The I.O. has on the basis of direction given by the D.I.G. Purnea, as mentioned in paragraphs-34 and 37 of the case diary submitted final form against the accused persons as case untrue.

8. This Court is of the view that action of D.I.G. Purnea to give such direction to I.O., without looking into the material available in the case diary and the earlier observations of the supervising authority was not in accordance with law.

9. Therefore, the impugned order passed by the court below without looking into the material available in the case diary suffers from illegality and the same is hereby quashed.

10. The court below is directed to pass fresh order in accordance with law after looking into the materials available in the case diary as well as allegation made in the First Information Report, within a period of two months from the date of receipt of this order.

11. This Criminal Miscellaneous application is accordingly allowed.

12. Let the LCR along with the case diary be returned to the learned court below forthwith.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	NAFR
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