

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.13638 of 2014

Arising Out of PS.Case No. -23 Year- 2013 Thana -MAHILA P.S. District- SARAN

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Satya Prakash Son of Radhey Shyam Baitha, resident of Green Enclave, Block-O, Flat No. 101, Kadama, P.O. & P.S. Kadama, Near Rankini Mandir, Jamshedpur (Jharkhand).

.... Petitioner/s

Versus

1. The State of Bihar.
2. Arati Kumari daughter of Late Thakur Prasad, permanent resident of village-Sathwara, P.O. & P.S. Isuapur, District- Saran, presently residing at West Boring Road, P.S.- Krishnapuri, District- Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Gourang Chatterjee, Adv.
For the O.P. No. 2 : Mr. Rakesh Kumar, Adv.
For the State : Mr. M.K. Nirala. APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 09-10-2017

1. This criminal miscellaneous application under section 482 of the Code of Criminal Procedure has been filed to quash the order dated 12th December 2013 passed by the learned Chief Judicial Magistrate, Saran at Chapra in Mahila Police Station Case No. 23 of 2013 whereby and whereunder the learned Magistrate finding *prima facie* case for the offences under sections 376 and 417 of the Indian Penal Code, took cognizance and summoned the petitioner.

2. Heard learned counsel for the petitioner, learned counsel for the opposite party no. 2 and the learned Additional Public



Prosecutor for the State and perused the record.

3. It appears that the opposite party no. 2 filed two cases against the petitioner. Firstly she filed Complaint Case No. 1957 of 2013 in the court of learned Chief Judicial Magistrate, Chapra, which was sent to concerned Police Station under section 156 (3) of the Code of Criminal Procedure for institution and investigation. This complaint case was filed on 08.07.2013 and after two days, she lodged an F.I.R. with Mahila Police Station on 10.07.2013. The learned counsel for the petitioner pointed out several contradictions on the manner, time and place of alleged rape. It has been submitted that this petitioner had or has no concern with the opposite party no. 2. The opposite party no. 2 has been set up by one Sunil Kumar, Advocate who was conducting his case in connection with matrimonial dispute which was filed by his wife. The said Advocate had taken an amount of Rs.3,50,000/- (three lacs fifty thousand rupees) for getting the dispute settled and compromised. The concerned Advocate had duped the petitioner and so he lodged a Police case against him. The said Advocate has set up this fictitious lady in collusion with the wife of this petitioner. It has been further submitted that the place of occurrence in both the cases are quite different which itself falsifies the case of opposite party no. 2 as regards alleged rape. The learned Additional Public Prosecutor



opposed the submission made on behalf of petitioner.

4. On going through the rival conventions of both the parties, I find that the main grievance of the petitioner is that the opposite party no. 2 is a fictitious lady and so her identity should be established first before the Trial Court. The Court below after going through the material on record, has taken cognizance against the petitioner for the offences under sections 376 and 417 of the Indian Penal Code. The defence of the petitioner cannot be taken into consideration at the time of cognizance and so I am not inclined to interfere with the impugned order under inherent jurisdiction.

5. In view of the above facts, this criminal miscellaneous application is disposed of with a direction to the Court below to expedite the trial. The petitioner will have liberty to raise all his defence at the stage of trial. However, the Trial Court is expected to ascertain the identity of opposite party no. 2 before examining her at the time of trial.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	12.10.2017
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