

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.22019 of 2011

Arising Out of Complaint Case No. -321 Year- 2010 Thana -Bahera District- DARBHANGA

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Bhola Das, S/o Late Chulhai Das, Resident of Bikupatti, Police Station- Bahera,
District- Darbhanga

.... Petitioner

Versus

1. The State of Bihar

2. Kali Devi W/o Shyam Das, Resident of Village- Kothbanna, Police Station-
Bahera, District- Darbhanga

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Sarvadeo Singh, Advocate

For the State : Mr. Chandra Bhushan Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 07-12-2017

Though, notice was served to the opposite party no.2,
she has neither appeared in person nor she is being represented
through any counsel.

2. Heard learned counsel for the petitioner and
learned counsel for the State.

3. This application under Section 482 of the Code of
Criminal Procedure (for short 'Cr. P.C.') has been filed by the
petitioner for quashing the order dated 24.05.2011 passed in
complaint case vide C.R. No. 321 of 2010 by the learned Additional



Chief Judicial Magistrate, Benipur, Darbhanga by which he has been summoned to face trial for the offence punishable under Section 376/511 of the Indian Penal Code.

4. Initially, a complaint case vide C.R. No.123 of 2010 was filed by the complainant in the court of Additional Chief Judicial Magistrate, Benipur alleging therein that on 22.04.2010 at 7:00 p.m. when she went out to attend the call of nature at her *maike* near Kamla river, the petitioner groped her and on the point of dagger he ravished her. She alleged that the occurrence was witnessed by Suresh Das, Manju Devi and Guniya Devi. The complainant alleged that initially an attempt was made to resolve the dispute through panchayati, but the petitioner failed to abide by the order passed in the panchayati.

5. The complaint case dated 04.05.2010 was referred to the police by the learned Additional Chief Judicial Magistrate for investigation under Section 156(3) of the Cr. P.C. pursuant to which Bahera P.S. Case No.102 of 2010 dated 10.05.2010 was registered against the petitioner under Section 376 of the Indian Penal Code and investigation was taken up. In course of investigation, statements of the witnesses named in the complaint were recorded under Section 161(3) of the Cr. P.C. On completion of investigation, the police submitted its report holding the



accusation made in the first information report to be false. It also recommended for initiation of a proceeding against the informant of the case under Sections 182 and 211 of the Indian Penal Code.

6. It would be pertinent to note here that while the investigation of the police case was going on, the complainant filed a protest petition in the court of learned Additional Chief Judicial Magistrate, Benipur. However, after receipt of the final report submitted by the police, the learned Additional Chief Judicial Magistrate accepted the same and directed for institution of a separate complaint on the basis of the protest petition filed by the informant pursuant to which C.R. No. 321 of 2010 was instituted against the petitioner. In the said protest petition, which was registered as a separate complaint, the allegations are identical to that of the allegations made in the initial complaint, which was referred to the police for investigation.

7. After institution of the complaint, the complainant was examined on solemn affirmation and, apart from the complainant, three witnesses namely Manju Devi, Guniya Devi and Suresh Das were also examined in course of inquiry conducted under Section 202 of the Cr. P.C. After holding inquiry, the learned Additional Chief Judicial Magistrate, Benipur summoned the petitioner to face trial for the offence punishable under Section



376/511 of the Indian Penal Code vide order dated 24.05.2011. The said order dated 24.05.2011 is under challenge in the present application.

8. Mr. Sarvadeo Singh, learned counsel appearing for the petitioner submitted that the instant complaint filed by the complainant is nothing but an abuse of the process of the court. It has been filed in retaliation to Bahera P.S. Case No.89 of 2010 dated 23.04.2010 registered under Sections 341, 323, 504 and 379/34 of the Indian Penal Code against the witness Suresh Das and the family members of Manju Das and Guniya Devi namely, Pramod Das and Jagdish Das respectively. He submitted that the witnesses examined in course of investigation by the police did not state that they had seen the occurrence, but while being examined the court during inquiry conducted under Section 202 of the Cr.P.C., they improved their version by stating that they had seen the complainant being ravished by the petitioner. He contended that though the alleged occurrence is said to have taken place on 22.04.2010, for no justifiable reason, the complaint was filed after a long delay on 04.05.2010 and, in the meantime, the complainant was not even examined by any doctor.

9. *Per contra*, learned counsel for the State submitted that so far as the instant complaint is concerned, the



learned Magistrate was not required to look into the materials collected by the police during investigation. He submitted that since the complainant and the witnesses examined on her behalf fully supported the allegations made in the complaint, no illegality can be found with the order passed by the learned Additional Chief Judicial Magistrate whereby he has summoned the petitioner to face trial.

10. I have heard learned counsel for the parties and carefully perused the record.

11. Admittedly, the alleged occurrence of rape is said to have taken place on 22.04.2010 at 7:00 p.m., but the complaint has been filed after twelve days of the occurrence and the only ground stated in the complaint for the delay caused in filing the complaint is that there was a panchayati held in the village and the petitioner failed to abide by the decision of the Panches. Neither the complainant nor the witness examined in course of inquiry has supported the factum of Panchayati regarding the alleged incident. The complainant herself has admitted that after the occurrence, she was not examined by any doctor. It would also be manifest from the record that the petitioner had filed a police case vide Bahera P.S. Case No.89 of 2010 dated 23.04.2010 against the witness Suresh Das and the five others including the family members of the witnesses Manju Devi and Guniya Devi. In the police case filed by



the petitioner, on completion of investigation, the Investigating Officer submitted charge-sheet against the accused persons under Sections 341, 323, 307 and 504/34 of the Indian Penal Code.

12. There appears to be force in the submission made by the learned counsel for the petitioner that just in order to put pressure upon the petitioner as also in retaliation to Bahera P.S. Case No.89 of 2010, the complainant filed the complaint initially on 04.05.2010 stating that the alleged occurrence took place on 22.04.2010. It would also be manifest from the deposition of the witnesses that though in the complaint the time of occurrence is said to be 7:00 p.m. while being examined in the court, they have stated that the occurrence took place at about 6:00 p.m. It is also not believable that when three witnesses had seen the petitioner committing rape upon the complainant as to why they did not object to the alleged act of the petitioner or raised *hulla*. There is also no explanation as to why no action was taken by the complainant under Section 154 of the Cr. P.C for institution of FIR. The learned Magistrate has also failed to appreciate the material discrepancies made in the statement of witnesses recorded under Section 202 of the Cr. P.C.

13. It is also relevant to note here that though the complainant has tried to justify the delay by stating in the complaint



that a panchayati was convened and some order was passed in panchayati, but neither the name of the Panch has been disclosed nor any Panch has come forward to corroborate the said statement.

14. Having regard to the discussions made hereinabove, I am of the opinion that the instant complaint filed by the complainant is malicious one and has been brought in order to spite the petitioner due to private and personal grudges.

15. Hence, allowing the prosecution to continue any more would amount to an abuse of the process of the Court. Thus, the impugned order dated 24.05.2011 passed by the learned Additional Chief Judicial Magistrate, Benipur, Darbhanga in Complaint Case bearing C.R. No.321 of 2010 is hereby quashed.

16. The application stands allowed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.12.2017
Transmission Date	14.12.2017

