

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.37340 of 2016

Arising Out of PS.Case No. -81 Year- 2015 Thana -LAURIYA District-
WESTCHAMPARAN(BETTIAH)

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Md. Sajid @ Sajid Mian son of Mustkim Mian, resident of Tola-Kandhwaliya, P.S.-
Lauriya, District-West Champaran, Bettiah.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Sumikhatun D/o Najbullah Mian, resident of village-Mastan Tola, Kandhbalia,
P.S.- Lauriya, District-West Champaran, Bettiah.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. D.K. Sinha, Sr. Adv. Mr. Abhinav Raj, Adv.
For the O.P. No.2	:	Mr. Pramod Kr. Sinha, Adv.
For the State	:	Mr. Jharkhandi Upadhyay, 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 18.02.2016 passed by the learned 1st Additional District and Sessions Judge-cum-Special Judge (POCSO), West Champaran, Bettiah in Lauria Police Station Case No. 81 of 2015 whereby and whereunder the learned Special Judge finding *prima facie* case, took cognizance against the petitioner for the offence under section 376 of the Indian Penal Code and section 4 of the POCSO Act.

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



Public Prosecutor for the State and perused the record.

3. The case has been registered on the basis of written report of the opposite party no. 2 wherein she has specifically alleged that on 08.04.2015 at about 11:00 P.M. this petitioner suddenly appeared from her behind and pressed her mouth and took her towards orchard and committed rape on her. He further threatened to kill her if she disclosed this fact to anyone. The matter was investigated and Police submitted charge sheet against this petitioner on the basis of which, the learned Special Judge took cognizance. I further find that the victim was produced before the Doctor, who assessed her age in between 14-15 years. The victim was produced before the Magistrate where her statement was recorded under section 164 of the Code of Criminal Procedure. She has supported the allegation of catching hold of her by this petitioner. She has stated that she lost consciousness on account of pressing of her mouth by this petitioner. She disclosed her age as 15 years at the time of recording her statement. The learned Magistrate has also assessed her age as such. The defence of the accused that the case has been compromised and both the parties have married and are residing together, cannot be taken into consideration in view of the fact that the informant was minor and the petitioner used criminal force and committed rape on her.

4. In the facts and circumstances of the case, I do not find



any merit in this criminal miscellaneous application. Accordingly, this application is dismissed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
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