

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.164 of 2016**

Arising Out of PS.Case No. -145 Year- 2010 Thana -DHANARUA District- PATNA

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1. Umda Devi @ Usha Devi W/o Ballabh Sharan, Resident of village-  
Nijamat, P.S.- Dhanarua, District- Patna

.... .... Petitioner/s

Versus

1. The State of Bihar  
2. Jagdish Ram, Son of Late Somar Ram, Resident of village- Nenauri  
(Milki), P.S.- Dhanarua, District- Patna

.... .... Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Satish Chandra, Advocate

For the Opposite Party/s : Mr. Kanhaiya Kishore (APP)

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**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**  
ORAL ORDER

2      27-01-2017                      Heard learned counsel for the petitioner as well as  
  
learned APP for the State.

On account of refusal to discharge the petitioner by the  
learned trial court vide order dated 26.11.2015 in Sessions Trial  
No. 647/2011 by Additional Sessions Judge-8<sup>th</sup> Patna under  
Section 227 of the CrPC, petitioner has preferred the instant  
petition.

Learned counsel for the petitioner has submitted that  
from perusal of the FIR, it is apparent that petitioner was not at all  
involved either in alluring the victim or in enticing her away.  
Furthermore, the so alleged victim, who happens to be a major,  
was carrying love affair with one Rajesh Kumar, petitioner's  
relative for the last one year, had volunteered herself on account



thereof, petitioner would not be permitted to be prosecuted under the instant sessions trial. That being so, the order impugned is fit to be set aside.

On the other hand, learned APP opposed the prayer and submitted that since the instant petition sans merit, the order impugned does not require any interference.

From the written report having been filed on behalf of father of the alleged victim, it is apparent that the alleged victim, Renu Kumari aged about 19 years became traceless in his absence. During course of search, he came to know that his daughter Renu Kumari along with Rajesh Kumar were apprehended by the police and accordingly, were confined at police station. On account thereof, he rushed towards police station and during midst of way, met with Renu Kumari and on query Renu disclosed that she was in love affair with Rajesh Kumar and further, also developed physical intimacy. On the alleged date, Rajesh Kumar instructed her to accompany to get themselves married and during course thereof, this petitioner, Umda Devi @ Usha Devi met with them in the midst of way. At the instance of Umda Devi @ Usha Devi, they both came to Patna where as per instruction of petitioner, they sat at a place awaiting arrival of the petitioner who had left the scene for the time being and during midst thereof, were



apprehended by the police.

During course of statement under Section 164 CrPC, the alleged victim Renu Kumari happens to be inconsistent with the initial version of the informant which, learned counsel for the petitioner insisted to rely in order to discredit the prosecution case.

At the stage of framing of charge neither meticulous examination of the evidences having been on record are to be made nor appreciation of inconsistency is permissible. In three Judges' Bench decision of the Hon'ble Apex Court in the case of *Sonu Gupta v. Deepak Gupta* as reported in **2015(2) PLJR 321(SC)** it has been held as follows:-

It is also well settled that cognizance is taken of the offence and not the offender. Hence at the stage of framing of charge an individual accused may seek discharge if he or she can show that the materials are absolutely insufficient for framing of charge against that particular accused. But such exercise is required only at a later stage, as indicated above and not at the stage of taking cognizance and summoning the accused on the basis of prima facie case. Even at the stage of framing of charge, the sufficiency of materials for the purpose of conviction is not the requirement and a prayer for discharge can be allowed only if the court finds that the materials are wholly insufficient for the purpose of trial. It is also a settled proposition of law that even when there are materials raising strong suspicion against an accused, the court will be justified in rejecting a prayer for discharge and in granting an opportunity to the prosecution to bring on record the entire evidence in accordance with law so that case of both the sides may be considered appropriately on conclusion of trial.



Consequent thereupon, the instant petition sans merit and is, accordingly, rejected.

However, petitioner will be at liberty to raise such eventualities as persisting in the prosecution case at an appropriate stage of the trial.

**(Aditya Kumar Trivedi, J)**

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