

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.36702 of 2012

Arising Out of PS.Case No. -100 Year- 2008 Thana –Kateya District- GOPALGANJ

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1. Phulena Yadav S/O Late Maker Yadav R/O Vill-Rampurkala, P.S.-Kateya, Distt-Gopalganj
 2. Awadhesh Yadav S/O Raj Kishore Yadav R/O Vill-Rampurkala, P.S.-Kateya, Distt-Gopalganj
 3. Raju Yadav S/O Raj Kishore Yadav R/O Vill-Rampurkala, P.S.-Kateya, Distt-Gopalganj
 4. Raj Kishore Yadav S/O Phulena Yadav R/O Vill-Rampurkala, P.S.-Kateya, Distt-Gopalganj
 5. Jawahar Yadav S/O Late Ramadhar Yadav R/O Vill-Rampurkala, P.S.-Kateya, Distt-Gopalganj
 6. Uma Yadav S/O Late Ramadhar Yadav R/O Vill-Rampurkala, P.S.-Kateya, Distt-Gopalganj

.... Petitioners

Versus

1. The State Of Bihar
2. Sheo Kumari Devi W/O Sri Shambhu Bhagat R/O Vill-Rampurkala, P.S.-Kateya, Distt-Gopalganj

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Suresh Prasad Bhakta, Advocate
For the Respondent : Mr. Jharkhandi Upadhyaya
For the Opposite Party/s : Mr. Ajay Kumar No. 2, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 17-05-2017

Heard both sides.

2. The petitioners seek quashing of the order dated 12.11.2008 passed by the learned Chief Judicial Magistrate, Gopalganj in Trial No. 1613 of 2012 arising out of Kateya P.S. Case No. 100 of 2008 and also the criminal prosecution of the petitioners.



3. The facts in brief is that the Opposite Party No. 2 filed a complaint case on the file of C.J.M., Gopalganj alleging therein that on 18.05.2008 at about 9:00 P.M. when the complainant and her family members were going to sleep after taking meal, all the accused persons who are petitioners before this Court armed with Lathi and Danda entered into her house after breaking the door. They assaulted the family members of the complainant and took away box containing clothes, ornaments and cash and accused Uma Yadav and Raju Yadav removed her clothes and committed rape on her one by one after gagging her mouth by putting clothes. The complainant raised alarm whereupon the villagers assembled and the accused persons fled away. The copy of the complaint petition was sent to Kateya Police Station for institution and investigation under Section 156(3) of Cr.P.C. The concerned Police Station registered the case and after investigation, submitted charge-sheet against the petitioners for the offences under Sections 341, 323 and 504/34 of the Indian Penal Code. The Chief Judicial magistrate after going through the materials in case diary found prima facie for the offences under Sections 147, 341, 448, 323, 376 and 504 of the Indian Penal Code, took cognizance of offence and ordered for issuance of summons. The offence under Section 376 of the Indian Penal Code is exclusively triable by the sessions



court, transferred the record with the file of Sri R.K. Shukla, of Class, G. Alamganj for commitment.

4. The learned counsel for the petitioners submits that there is absolutely no material against any of the petitioners as regards the offence of rape. The matter was investigated by police and they submitted charge-sheet for the offence under Sections 341, 323, 504/34 of the Indian Penal Code. The father-in-law of the complainant had filed a police case also against the petitioners for the same occurrence which was registered as Kateya P.S. Case No. 70 of 2008. In the said case, it was simply alleged that the accused persons threw his daughter-in-law and after assaulting, they took away the household articles. The matter was investigated and police submitted charge-sheet under Sections 341, 323, 504/34 of the Indian Penal Code on 31.05.2008. In that case also the Judicial Magistrate took cognizance. The said case is pending before the Judicial Magistrate, 1st Class, Gopalganj. In the aforesaid two cases, police submitted two charge-sheets. The police did not find any allegation of rape against any of the petitioners. It was also submitted that in face of earlier case bearing Kateya P.S. Case No. 100 of 2008 registered on the basis of written report of father-in-law of the complainant, the learned



C.J.M. ought not to have passed order for sending the complaint petition for registration and investigation under Section 156(3) Cr.P.C. The cognizance order dated 12.11.2008 and continuance of the entire proceeding bearing no. 1613 of 2012 is abuse of the process of Court in face of criminal proceeding bearing no. 944 of 2012 arising out of Kahera P.S. Case No. 70 of 2008.

5. The learned APP for the State, on the other hand, opposed the submissions. It has been submitted that the learned Magistrate on the basis of materials on record rightly took cognizance and ordered for issuance of summons against the petitioners.

6. After hearing both sides and perusing the documents available on record, which are annexed with the application, I find that there is specific allegation of commission of rape against two of the petitioners (accuseds). It is true that the father-in-law of the complainant has not specifically alleged that the rape was committed on his daughter-in-law. He has alleged that the accused persons threw his daughter-in-law on the ground. The learned Magistrate perused the statements of the witnesses recorded at paragraph nos. 16 and 17 of the case diary wherein the witnesses have supported the allegation of rape against the petitioner Uma



Yadav. The learned Magistrate found prima facie case also for the offence under Section 376 of the Indian Penal Code and accordingly, took cognizance. The petitioners will have liberty to raise their grievance before the court below at the time of framing of charge and also trial of cases together in view of the provision of Section 210 Cr.P.C.

7. In view of the discussions made above, I do not find any merit in this application and the same is, accordingly, dismissed.

(Sanjay Kumar, J)

ajaypd./-

AFR/NAFR	NAFR
CAV DATE	N/A
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