

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.46722 of 2014

Arising Out of PS. Case No.-162 Year-2013 Thana- DUMRAUN District- Buxar

-
1. Surendra Rai
 2. Indrajeet Rai @ Jeet Rai Both S/o Ramawadha Rai
 3. Brijbihari Singh @ Mathuri Rai S/o Ram Singasan Rai All are residnet of village- Kasiya, P.S.- Dumraon, District- Buxar

... .. Petitioner/s

Versus

1. The State of Bihar
2. Neeta Kumari D/o Jangbahadur Rai Resident of village- Kasiya, P.S.- Dumraon, District- Buxar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Arun Kumar Gupta, Advocate
For the Opposite Party/s : Mr. RAJENDRA PRASAD NAT (APP)

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL ORDER

3 17-11-2017 Heard the parties.

This petition under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 05.09.2014 passed in Criminal Revision No. 36 of 2014 by learned Sessions Judge, Buxar, by which the revision petition filed by petitioners has been dismissed and order dated 28.11.2013 passed by learned Chief Judicial Magistrate, Buxar, in Dumraon P. S. Case No. 162 of 2013 (G.R. No. 1896 of 2013) taking cognizance under Sections 323, 504, 376 and 511 of the Indian Penal Code against the petitioners was confirmed.

Briefly stated the fact of the case is that informant, namely, Neeta Kumari gave written report to the Station House Officer,



Dumraon Police Station, alleging therein that on 13.08.2013 when she was sleeping in her house, then accused persons, namely, Brij Bihari Rai @ Mathuri Rai, entered into her house to commit rape and on her raising alarm her brother came and Brij Bihari Rai assaulted him and thereafter, fled away. It has further been alleged that cousin brothers of Brij Bihari Rai, namely, Surendra Rai and Jeet Rai @ Indrajeet Rai, also came and assaulted his brother. On the basis of said written statement of informant, Dumraon P. S. Case No. 162 of 2013 was instituted against the petitioners for offence under Sections 341, 323 and 354 r/w 34 of the Indian Penal Code.

After investigation police submitted chargesheet against petitioners under Sections 323 and 504 of the Indian Penal Code but the court below after perusing FIR, case diary, materials collected during investigation and statement of witnesses took cognizance of the offence under Sections 323, 504, 376 and 511 r/w 34 of the Indian Penal Code. Thereafter, petitioners moved before the District and Sessions Judge, Buxar, against the order taking cognizance in Criminal Revision No. 36 of 2014 which was dismissed by order dated 05.09.2014. The trial court after perusing the records of the case has found that there are sufficient materials for taking cognizance under Sections 323,



504, 376 and 511 of the Indian Penal Code and took cognizance under said Sections against the petitioners and issued summons for their appearance and to face trial.

The revisional court after going through the F.I.R., case diary, chargesheet and other materials available on record has found that informant in her written statement has alleged attempt to commit rape against the accused petitioner Mathuri Rai and of assault against two other accused persons. She has supported her complaint in her statement also. Witnesses during investigation have supported the case of informant. The revisional court has found that the trial court after perusing all materials available on record found sufficient materials to found a prima facie case against the accused petitioners under Sections 323, 504 and 376/511 of the Indian Penal Code and took cognizance of the offence and the revisional court does not find any irregularity in such order and dismissed the revision petition of the petitioners.

The trial court is not bound by the opinion of the investigation officer and on the basis of materials available on record can differ with the opinion of the investigation officer and take cognizance in any other Sections of the Indian Penal Code which appears from the record as made out against



petitioners.

As such, I am not inclined to interfere with the order passed by both the courts below. However, petitioners are at liberty to raise all issues raised in this petition as well as other issues available to them at the stage of discharge petition/framing of charge.

With said liberty and observation the present petition is disposed of.

(S. Kumar, J)

sudip/-

U		T	
---	--	---	--

