

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.52913 of 2013

Arising Out of PS.Case No. -227 Year- 2000 Thana -SAMASTIPUR COMPLAINT CASE District-
SAMASTIPUR

=====

Ram Kisun Mahto @ Ram Krishna Mahto, son of Sri Ram Lakhan Mahto, resident
of Village- Boria, P.S.- Bibhutipur, District- Samastipur

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL JUDGMENT
Date: 23-01-2017

Petitioner has filed this application under Section 482 of the Code of Criminal Procedure for quashing the order dated 11.7.2001 passed by the Sub-Divisional Judicial Magistrate, Rosera, Samastipur in Trial No.1395 of 2001, arising out of Complaint Case No. 227 of 2000, by which after finding a prima facie case against the accused persons, including the petitioner, under Section 376 of the Indian Penal Code, the learned court below has ordered for issuance of processes against the petitioner.

The prosecution case, as per the complaint petition, in short, is that one Somni Devi has lodged a complaint case before the ACJM, Rosera against the petitioner alleging, inter alia, therein that on the time and date of occurrence, while the complainant was cutting grass in the field, in the meantime accused persons passed derogative comment on her and on protest by the complainant she was raped by



them one after another and on her alarm her husband and daughter, who were working in nearby field, came there and then the accused persons fled away from the place of occurrence.

On the basis of the aforesaid complaint, Complaint Case No. 227 of 2000 was registered against the petitioner and one other and the case was transferred for enquiry and trial. The learned court below after enquiry under Section 202 of the Code of Criminal Procedure finding a prima facie case under Section 376/34 of the Indian Penal Code, has ordered for issuance of processes by order dated 11.7.2001 and the aforesaid order is under challenge in this application under Section 482 of the Code of Criminal Procedure by the petitioner.

It has been submitted by learned counsel for the petitioner that prior to filing of the present complaint petition a complaint case has been lodged by one of the co-accused, namely, Yogendra Mahto, against the present complainant and her family members under Sections 341, 323, 447, 427 and 379 of the Indian Penal Code and one more complaint case being C.R. No. 686 of 1999 was filed against the family members of the present complainant, in which the petitioner was a witness, and in order to save their skin the present complaint case has been lodged. It has further been submitted that one co-accused Yogendra Mahto has faced the trial and by the judgment and



order dated 24.2.2006, finding case not true, he has been acquitted in this case and, as such, it would not be proper to force the petitioner to face the trial when there is case and counter case between the parties and the same would be only wastage of time of the court and it is an abuse of the process of the court and, as such, it is prayed that the entire proceeding should be quashed. Learned counsel further submits that a withdrawal petition has also been filed by the complainant Somni Devi in the court below for withdrawing the case and as such when a compromise has been arrived at between the parties no useful purpose will be served for keeping the case pending for trial and in support of his contention, learned counsel has relied upon a case in the case of **Keshav Jayant Tiwary & Anr. vs The State of Bihar, reported in 2005(3) PLJR 300** and another decision of the Apex Court has been cited in the case of **Suresh Chaudhary vs. State of Bihar, reported in (2003) 4 SCC 128** on the point that in similar case when the other co-accused has been convicted by the learned court below and on appeal filed before the Hon'ble High Court also and on appeal filed by one co-accused the Hon'ble Supreme Court has set aside the judgment of the Hon'ble High Court of the accused person as well as the co-accused who had not filed appeal before the Supreme Court. On the aforesaid submission of learned counsel for the petitioner, prayer has been made for setting aside the impugned order.



Heard learned APP also.

Learned APP has opposed the application of the petitioner stating that it is not the proper stage for consideration of all these allegations.

Having heard learned counsel for both sides and after perusal of the record, it appears the order taking cognizance was passed on 11.7.2001, whereas the instant quashing application has been filed by the petitioner on 16.12.2013. It further appears that one of the co-accused had also faced trial and after trial he has been acquitted but the petitioner has not appeared before the court below and was absconding. It further appears from perusal of the records that the court below has rightly taken cognizance under Section 376 of the Indian Penal Code against the petitioner as the materials were available before the court for taking cognizance. So far as the submission of learned counsel for the petitioner that withdrawal petition has been filed, in my opinion, the offence is not compoundable and as such the court below has not passed any order on the same.

So far as the decision cited by learned counsel for the petitioner in Keshav Jayant Tiwary's case (supra) is concerned, the same is not applicable in the facts and circumstances of the case and secondly so far as the other decision of the Supreme Court in Suresh



Chaudhary’s case (supra) is concerned, the same is also not applicable to the facts and circumstances of the present matter as the petitioner in the present case was either absconding or not appearing in the court below, whereas the co-accused has been acquitted after full-fledged trial. Secondly, the order taking cognizance is of the year 2001 and the present application has been filed in 2013, as such, it is not desirable for the court to quash the order taking cognizance after a delay of 12 years.

In view of the aforesaid facts, I find no merit in this application.

However, in view of the facts and circumstances of the case, the trial court is directed to proceed with the trial and conclude the same within a period of six months and the court below will not be prejudiced by any observation made by this Court in this order.

With the above observations and directions, this application is dismissed.

(Vinod Kumar Sinha, J)

spal/-

AFR/NAFR	
CAV DATE	
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