

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.32744 of 2017

Arising Out of PS.Case No. -53 Year- 2010 Thana -MADHUBANI COMPLAINT CASE District-
MADHUBANI

- =====
1. Rupan Kumar son of Jai Kant Paswan
 2. Suresh Paswan son of Jai Kant Paswan
 3. Jai Kant Paswan son of late Prabhu Paswan

All resident of village-Ghat Bhatara, P.S.-Bisfi, District-Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar
2. Sushila Devi wife of Umesh Paswan, resident of village-Sasarma, P.S.-Bisfi,
District-Madhubani.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Mahesh Narayan Parbat, Sr. Advocate
: Mr. Sanjay Kumar, Advocate
For the State : Mr. Ram Sewak Choudhary, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 22-08-2017

Heard Mr. Mahesh Narayan Parbat, learned Senior Advocate for the petitioners and Mr. Ram Sewak Choudhary, learned Additional Public Prosecutor appearing for the State.

2. This application under Section 482 of the Code of Criminal Procedure (For short 'the CrPC') has been filed for quashing the order dated 25.05.2017 passed by the Fast Track Court-II, Madhubani in Session Trial No.34 of 2011 arising out of Complaint



Case No.53 of 2010, whereby and whereunder the application filed by the petitioner for recall of P.W.3, the alleged victim and P.W.5, the complainant for further cross-examination under Section 311 of the CrPC, has been rejected.

3. It has been submitted by Mr. Mahesh Narayan Parbat, learned Senior Advocate appearing for the petitioners that the petitioners are being prosecuted for the offences punishable under Sections 376 and 384 of the Indian Penal Code (for short 'the IPC'). In course of trial altogether seven witnesses were examined. Out of them, P.W.3 is the alleged victim and P.W.4 is the complainant, who is mother of the victim. He has submitted that during course of trial marriage of petitioner no.1 was solemnized in the year, 2011 in a different family and he is blessed with two sons. Similarly, marriage of the victim was also solemnized in a different family and she is blessed with a female child. He has submitted that after examination of the witnesses an amicable settlement has arrived at between the parties due to intervention of common friends and well wishers and good relations have prevailed amongst them. Accordingly, a compromise petition was filed before the trial court on 14.12.2013.

4. In view of such developments, after closure of the evidence, while the case was fixed for defence, an application was filed on behalf of the petitioners on 20.05.2017 under Section 311 of



the CrPC for recall of P.W.3 and P.W.4 for further cross-examination on the point of compromise.

5. Mr. Mahesh Narayan Parbat, learned Senior Advocate appearing for the petitioner, has submitted that the application under Section 311 of the CrPC was not even opposed by the complainant by filing any rejoinder, but the trial court, after hearing the parties, erroneously rejected the said application, vide impugned order dated 25.05.2017. He has submitted that the impugned order dated 25.05.2017 is wholly illegal and without jurisdiction, as while passing the order, the trial court committed grave error of law and has failed to appreciate that since the matter has already been compromised in between the parties, no useful purpose was going to be served by keeping the trial pending. He has submitted that the trial court ought to have taken a lenient view in the matter keeping in mind the peace in life of petitioner no.1 as well as the victim. He has submitted that Section 311 CrPC empowers the court to recall a witness and re-examine him, if the evidence is necessary for just decision of the case.

6. Per contra, Mr. Ram Sewak Choudhary, learned Additional Public Prosecutor appearing for the State has submitted that the order impugned is neither erroneous nor perverse. He has submitted that the trial court has rightly held in its order dated 25.05.2017 that the offences under Sections 384 and 376 of the IPC



are not compoundable in nature and, thus, recall of the victim and the informant for their examination on the point of compromise was not required.

7. I have learned counsel for the parties and perused the record. I find force in the submissions made by the learned Additional Public Prosecutor appearing for the State.

8. It is well settled position in law that rape is a non-compoundable offence and it is an offence against society. It is not a matter to be left for the parties to compromise and settle. It is also well settled in law that a compromise entered into between the rape victim and the accused not to prosecute cannot be a further ground to be a leading factor for award of lesser punishment.

9. In **Shimbhu and another vs. State of Haryana**, reported in (2014) 13 SCC 318, a three-Judge Bench of the Supreme Court observed:

“Further, a compromise entered into between the parties cannot be construed as a leading factor based on which lesser punishment can be awarded. Rape is a non-compoundable offence and it is an offence against the society and is not a matter to be left for the parties to compromise and settle. Since the Court cannot always be assured that the consent given by the victim in compromising the case is a genuine consent, there



is every chance that she might have been pressurized by the convicts or the trauma undergone by her all the years might have compelled her to opt for a compromise. In fact, accepting this proposition will put an additional burden on the victim. The accused may use all his influence to pressurize her for a compromise. So, in the interest of justice and to avoid unnecessary pressure/harassment to the victim, it would not be safe in considering the compromise arrived at between the parties in rape cases to be a ground for the Court to exercise the discretionary power under the proviso of Section 376(2) IPC.”

10. In **State of Madhya Pradesh vs. Madanlal**, reported in (2015) 7 SCC 681, the Supreme Court while hearing the case related to attempt to rape of minor observed :

“The conception of compromise under no circumstances can really be thought of.”

11. In a case of rape or attempt to rape the court further observed:

“Dignity of a woman is a part of her non-perishable and immortal self and no one should ever think of painting it in clay. There cannot be a compromise or settlement as it would be against her honour which matters the most. It is sacrosanct. Sometimes solace is given that the perpetrator of the crime has acceded to enter



into wedlock with her which is nothing but putting pressure in an adroit manner; and we say with emphasis that the courts are to remain absolutely away from this subterfuge to adopt a soft approach to the case, for any kind of liberal approach has to be put in the compartment of spectacular error. Or to put it differently, it would be in the realm of sanctuary of error. Such an attitude reflects lack of sensibility towards the dignity, the *élan vital*, of a woman. Any kind of liberal approach or thought of mediation in this regard is thoroughly and completely sans legal permissibility.”

13. Having regard to the ratio laid down by the Supreme Court in the decisions noted above, on the facts and in the circumstances of the case, I see no illegality in the order passed by the trial court, whereby the application filed by the petitioner under Section 311 of the CrPC for recalling the victim and the complainant of the case for further cross-examination on the point of compromise, has been rejected.

14. Accordingly, the application, being devoid of any merit, is dismissed.

15. As it would appear from the impugned order passed by the trial court that the prosecution evidence has already been closed,



the trial court shall proceed with the trial expeditiously and decide the case on its own merits without being prejudiced in any manner by this order.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
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