

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.M.P. No. 204 of 2014

Khemsagar Yadav, S/o. Shri Chudmani, Aged About 35 Years, Caste – Mahkul, R/o. Mudabahla, PS- Bagbahar, Distt. Jashpur, Civil and Rev. Distt. Jashpur C.G.

---- Petitioner

Versus

1. State Of Chhattisgarh, Through : S.H.O., P.S. -Bagbahar, Distt. -Jashpur, Civil and Rev. Distt. -Jashpur C.G.
2. Smt. Sushila Bai, W/o. Kailash Yadava Aged About 30 Years, R/o. Mudabahla, P.S. -Bagbahar, Distt. Jashpur, Civil and Rev. Distt. -Jashpur C.G.

-----Respondents

For Petitioner	: Mr. Vivek Tripathi, Advocate
For Respondent No.1/State	: Mr. Ashish Shukla, Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

26/07/2017

Heard.

1. Counsel for the petitioner submits that respondent No.2 lodged an FIR against petitioner on 30.07.2013 alleging that on 24.07.2013 at 9.30 pm petitioner outraged her modesty and threatened to kill her. In later development on 04.08.2013, petitioner filed another application before police alleging in it that on the date of incident on 24.07.2013 and time 9.30 pm, petitioner came to her residence and forcefully raped her at the point of knife. Thereafter, the investigation has been taken up. Medical report and FSL report do not disclose commission of any sexual intercourse with respondent No.2. Statement under Section 161

of Cr.P.C of respondent No.2/prosecutrix was also recorded on 04.08.2013 with improvement. The prosecution on the basis of this kind of evidence based on belated FIR, belated recording of statement and improvement of statement is abuse of process.

2. Counsel for the State has opposed the grounds in this petition and arguments submitted by the counsel for the petitioner.
3. Perused all the material on record. It can not be said that it is a case of no evidence. The ground raised in this petition that FIR is belated, deliberate and certain improvement were made at the later stage of investigation. This ground can be raised in defence by the petitioner and it is under the jurisdiction of the trial Court to take decision with respect to accepting or rejecting the evidence of the prosecution on the basis of the principles of law applied to it. Hence it is not a case in which the inherent jurisdiction under Section 482 of Cr.P.C. can be exercised.
4. Hence this petition is dismissed at motion stage itself.

Sd/-
(Rajendra Chandra Singh Samant)
Judge