

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.35886 of 2015

Arising Out of PS. Case No.-102 Year-2009 Thana- MARHAURA District- Saran

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Rabbuddin Mian @ Rabuddin S/o Mauladdin resident of village- Pacharukhi,
P.S. Bheldi, District- Saran.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Hasina Khatoon D/o Late Mohammad R/o village- Pachrukhi, P.S. Beldi,
District- Saran.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Manoj Kumar

For the Opposite Party/s : Mr. Kanhaiya Kishore(App)

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT

Date : 10-04-2018

Heard learned counsel for the petitioner.

Learned counsel for the opposite party no.2 has appeared
suo motu although no notice was issued from this Court. Heard
learned counsel for the opposite party no.2 also.

Learned counsel for the petitioner has submitted that
earlier the learned Sessions Judge has allowed the petition of the
petitioner under Section 228 of the Cr. P.C. and has held that
no offence under Section 376 of the I.P.C. is made out in this
Case. The learned Sessions Judge has, however, by the
impugned order rejected the petition of the petitioner filed
under Section 228 of the Cr. P.C. and held that offence under
Section 376 of the IPC is made out in this case .

Learned counsel for the informant-opposite party no.2



has submitted that earlier order passed by the learned Sessions Judge dated 21.10.2011 was challenged in this Court vide Cr. Misc. no. 750 of 2012. The Hon'ble Court has set aside the order of the learned Sessions Judge and remitted back the matter to the learned Sessions Judge to pass fresh order after looking into the provisions contained in Section 90 of the Indian Penal Code.

From the impugned order, it appears that the learned Sessions Judge has after remitting the matter from this Court considered the matter afresh in the light of the observation made by this Court in Cr. Misc. no. 750 of 2012 and passed the impugned order holding that offence under Section 376 of the IPC is made out and has rejected the petition of the petitioner filed under Section 228 of the Cr. P.C. This Court after looking into the impugned order finds that this Court had already observed in Cr. Misc. no. 750 of 2012 that the order of the learned Sessions remitting back the case holding that no offence under Section 376 IPC is made out, to be bad in law and set aside the aforesaid order, holding that the learned Sessions Judge had not appreciated the provisions contained in Section 90 of the I.P.C. and remitted back the matter to the learned Sessions Judge to pass fresh order. The learned Sessions



Judge has, accordingly, after looking into the records and also in the light of the order passed by this Hon’ble Court rejected the petition of the petitioner filed under Section 228 Cr. P.C. holding that offence under Section 376 of the I.P.C. is also made out.

Learned counsel for the opposite party no.2 has submitted that charge has already been framed for the offence under Section 376 of the IPC. Therefore, this Court does not find any illegality in the impugned order. This Cr. Misc. petition is, accordingly, dismissed. The Court below is directed to proceed with the trial in accordance with law.

(Sanjay Priya, J)

shyambihari/-

AFR/NAFR	NAFR
CAV DATE	N/A
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