

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.13817 of 2017

Arising Out of PS.Case No. -61 Year- 2013 Thana -RAMPUR District- GAYA

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Jitendra Prasad, son of Late Santan Prasad, resident of Village- Usewa, Police Station- Gurua, District- Gaya.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Kumari Nikunj Nilima, wife of Late Narendra Kumar, resident of Mohalla- Housing Board Colony, L.I.G. 72 Police Station- Rampur, District- Gaya. at present Vill- Usewa, P.S.- Gurua, Distt- Gaya.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Umesh Kumar Verma, Advocate.

For the Opposite Party/s : Mr. Jharkhandi Upadhyay, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 06-07-2018

Heard learned counsel for the petitioner and learned counsel for the State.

2. This application under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') has been filed for quashing the order dated 28.02.2017 passed by the learned Additional District and Sessions Judge, Gaya in Sessions Trial No.11 of 2017 arising out of Rampur P.S. Case No. 61 of 2013 by which the application preferred under Section 227 of the Cr.P.C. for discharge from the case has been rejected.

3. Learned counsel for the petitioner submitted that the allegations made in the F.I.R. are actuated with malafide. There is no truth behind what has been stated in the F.I.R. rather the prosecutrix, who has instituted the F.I.R, is in the habit of filing false cases. He submitted that ignoring these vital aspects the court below, vide



order dated 28.02.2017, dismissed the application filed under Section 227 of the Cr.P.C.

4. On the other hand, learned counsel for the State opposed the application preferred by the petitioner. He submitted that there are serious allegations in the F.I.R and finding those allegations to be true in course of investigation, the police submitted charge-sheet pursuant to which cognizance was taken. After hearing the parties and upon examination of materials on record, the court below found sufficient materials to proceed against the petitioner for the offences punishable under Sections 457 and 376/511 of the Indian Penal Code. He contended that there is no error in the order impugned and the application is fit to be dismissed.

5. Heard learned counsel for the parties and perused the record.

6. From perusal of the allegations made in the F.I.R., it would be manifest that the informant, a school teacher, has alleged in her complaint that on 25.02.2013 at about 12:00 noon, the petitioner entered into her house, threatened her to withdraw the case instituted against him earlier vide Gurua P.S. Case No. 23 of 2013 and forcibly took her to her bed room and after disrobing her he tried to rape her. The complainant has further alleged that she resisted his attempt and raised alarm. In the meantime, a neighbour came to meet her whereafter the petitioner fled away after snatching her golden earring



and necklace. In course of investigation, the statements of the complainant and other witnesses were recorded under Section 161(3) of the Cr.P.C. They all supported the allegations made in the FIR. Finding the allegations to be true, the police submitted charge-sheet pursuant to which cognizance was taken and the petitioner was summoned to face trial.

7. The allegations are quite serious and having found true during investigation, the defence of the petitioner cannot be a ground for discharge.

8. Moreover, the defence of false implication taken by the petitioner for discharge from the case can be established during trial. At the stage of framing of charge the court has simply to consider as to whether the materials on record are sufficient to proceed against the accused or not.

9. In that view of the mater, I see no error in the order impugned whereby the application filed by the petitioner seeking discharge has been rejected. The application is dismissed. The court below is directed to proceed with the trial expeditiously.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	07-07-2018
Transmission Date	07-07-2018

