

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.48336 of 2015**

Arising Out of PS.Case No. -10 Year- 2015 Thana -MAHILA PS District- BUXAR

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1. Sarwan Yadav @ Sarwan Kumar Yadav Son of Late Baban Yadav,
  2. Dharmendra Yadav @ Chunmun Yadav, Son of Uma Shankar Yadav,
  3. Sonu Yadav @ Sonu Kumar Yadav, Son of Ramashray Yadav, All Residents of Village - Chakki Rangi Dera, Police Station - Brahampur, District - Buxar.
  4. Munib Yadav @ Munib Kumar Yadav, Son of Suraj Narayan yadav, Resident of Village - Chhotaki Basauli, P.S. - Buxar (Ind), District - Buxar.

.... .... Petitioners

Versus

The State of Bihar

.... .... Opposite Party

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**Appearance:**

For the Petitioner/s : Dr. Kamal Deo Sharma, Advocate.  
For the Informant : Mr. Bachan Jee Ojha, Advocate.  
Mr. Anand Kumar, Advocate.  
For the State : Mr. Mukeshwar Dayal, APP.

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**CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL**  
**ORAL JUDGMENT**  
**Date: 31-08-2018**

**Re.: I.A. No. 1082 of 2017**

Petitioners have filed the Cr. Misc. No. 48336 of 2015 for quashing the order dated 27.08.2015 passed by A.D.J.-III, Buxar in Session Trial No. 172 of 2015 arising out of Buxar Mahila P.S. Case No. 10 of 2015 whereby the learned lower court rejected the



prayer of the petitioners to frame charge in Brahampur P.S. Case No. 95 of 2015 in place of Buxar Mahila P.S. Case No. 10 of 2015. In the present quashing petition, petitioners have filed aforesaid interlocutory application to quash the second F.I.R. bearing Buxar Mahila P.S. Case No. 10 of 2015 besides aforesaid order dated 27.08.2015 by making amendment in the prayer and relief portion of the quashing petition which is not maintainable.

However, the petitioners, if so advised, may file separate quashing petition for quashing of the aforesaid F.I.R bearing Buxar Mahila P.S. Case No. 10 of 2015. Accordingly, aforesaid interlocutory application is rejected.

**Re.: Cr. Misc. No. 48336 of 2015**

Heard learned counsel for the petitioners, learned counsel for the informant and learned APP for the State.

2. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the cognizance order dated 27.08.2015 passed by the A.D.J.-III, Buxar in Session Trial No. 172 of 2015 arising out of Buxar Mahila P.S. Case No. 10 of 2015 whereby the learned Lower Court rejected the petition dated 14.08.2015 of the petitioners filed to frame charge in Brahampur P.S. Case No. 95 of 2015 in place of Buxar Mahila P.S. Case No. 10 of 2015.



3. Factual matrix of the case is that the informant Gita Kumari @ Chhotaki filed Brahampur P.S. Case No. 95 of 2015 under Sections 341, 323 and 354/34 of the Indian Penal Code against the accused Dharmendra Yadav @ Chunmun Yadav and Sarwan Yadav with the allegation in succinct that on 16.04.2015 at around 07:30 PM while she was to sit for defecation in the field of Shivdayal Yadav, accused persons emerged there and shoved her in the field and assaulted and dragged her holding her hand. In the meantime responding the alarm made by her, when her brother rushed there then accused persons left the scene. Said informant filed another case bearing Buxar Mahila P.S. Case No. 10 of 2015 under Section 376-G of the Indian Penal Code against the aforesaid two accused persons namely Sarwan Yadav and Dharmendra Yadav @ Chunmun Yadav and two unknown miscreants regarding the same date and time of occurrence with the allegation in succinct that during the course of defecation in the field of Shivdayal Yadav on the aforesaid date and time, aforesaid two accused persons along with two other unknown miscreants emerged there and badly assaulted her and made her injured. Then all the four accused persons committed rape against her resultantly she fell senseless. Her brother took her to house. Aforesaid Buxar Mahila P.S. Case No. 10 of 2015 was investigated by the police and on conclusion of the investigation, I.O. submitted



chargesheet under Section 376-G of the Indian Penal Code against the aforesaid accused persons. After perusing the chargesheet and the case diary, learned SDJM, Buxar took cognizance of the offence against the accused persons and the case was committed to the Court of Sessions and Sessions Court fixed the case for framing charge. In the meantime, petitioners filed a petition dated 14.08.2015 for framing of charge in Brahampur P.S. Case No. 95 of 2015 instead of Buxar Mahila P.S. Case No. 10 of 2015 submitting that the aforesaid case was filed earlier to the Buxar Mahila P.S. Case No. 10 of 2015 and regarding the same occurrence, two F.I.Rs. are not maintainable, hence charge may be framed in the first case i.e. Brahampur P.S. Case No. 95 of 2015.

4. Learned lower court after hearing the parties and considering the facts and circumstances of the case rejected the aforesaid petition of the petitioners and against the said rejection order, petitioners have filed the present quashing petition.

5. It is submitted by learned counsel for the petitioners that Brahampur P.S. Case No. 95 of 2015 was filed earlier to the Buxar Mahila P.S. Case No. 10 of 2015 and the date of occurrence, time of occurrence, place of occurrence and accused persons are same barring two additional unknown miscreants in Buxar Mahila P.S. Case No. 10 of 2015. In Brahampur P.S. Case No. 95 of 2015,



informant has not alleged about commission of rape against her by the accused persons but in quite contradiction to the aforesaid case, in Buxar Mahila P.S. Case No. 10 of 2015, she has alleged about commission of rape against her by the aforesaid accused persons along with two other unknown miscreants. It is further submitted that in the statement recorded under Section 164 Cr.P.C., the informant has stated that she had regained sense on the following morning at 3 AM, but the injury report indicates that she was treated preceding to the aforesaid period which creates serious doubt about the aforesaid subsequent F.I.R.. Hence, the charge in the Brahampur P.S. Case No. 95 of 2015 is liable to be framed instead of Buxar Mahila P.S. Case No. 10 of 2015.

6. On the other hand, learned APP for the State and learned counsel for the informant advocating the correctness and validity of the impugned order have submitted that learned lower court has passed the aforesaid order correctly appreciating the materials available on record and same is sustainable and this petition is shorn of merit and is liable to be dismissed. Learned counsel for the informant further submitted that after framing of charge in Buxar Mahila P.S. Case No. 10 of 2015, evidence of both the sides has been recorded in the aforesaid case and the case is pending for argument.

7. From perusal of the record, it appears that albeit



Brahampur P.S. Case No. 95 of 2015 was instituted under Sections 341, 323 and 354/34 of the Indian Penal Code by the informant against the petitioners Sarwan Yadv and Dharmendra Yadav preceding to the Buxar Mahila P.S. Case No. 10 of 2015 instituted by the same informant regarding the same date and time of occurrence under Section 376G of the Indian Penal Code, but the aforesaid Brahampur P.S. Case No. 95 of 2015 is still under investigation and chargesheet in the said case has not been submitted as yet while on the other hand in the Buxar Mahila P.S. Case No. 10 of 2015, after conclusion of the investigation, I.O. has submitted chargesheet and learned SDJM, Buxar has taken cognizance and after commitment of the case, the case was fixed for framing of charge. As per the submission of the learned counsel for the informant, charge in the aforesaid case has already been framed and the case is at the stage of argument.

**8.** Petitioners have not filed any petition in the court below to keep the proceeding of Buxar Mahila P.S. Case No. 10 of 2015 in abeyance till the submission of the chargesheet in Brahampur P.S. Case No. 95 of 2015. Though the learned counsel for the petitioners has made an attempt to raise doubt about the prosecution case of Buxar Mahila P.S. Case No. 10 of 2015 by citing F.I.R. of Brahampur P.S. Case No. 95 of 2015, statement of the informant



recorded under Section 164 Cr.P.C. and her injury report, but in my considered opinion, aforesaid effort of the learned counsel for the petitioners at this stage is fruitless. He may take aforesaid recourse in the court below during the course of trial.

9. In the facts and circumstances of the case, I do not find any illegality and impropriety in the impugned order passed by the learned lower court. Accordingly, this quashing petition is dismissed.

**(Prakash Chandra Jaiswal, J)**

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