

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.39765 of 2016

Arising Out of PS. Case No.-127 Year-2011 Thana- SARAI District- Vaishali

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Rakesh Kumar son of Sri Ram Chandra Rai resident of Village- Jehangirpur
Patedha District- Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Miss Babli Kumari daughter of Sri Raghu Yadav resident of Village-
Kurtipara P.S- Pakur Nagar District- Pakur(Jharkhand) at present resident of
Village- Jehangirpur Patedha, P.S.- Sarai District- Vaishali.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Usha Kumari Singh
For the Opposite Party/s : Mr. Md. Ashlam Ansari

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT

Date : 28-11-2018

Heard the learned counsel for the petitioner as well as
the State. None has appeared on behalf of O.P. No. 2 although his
name is appearing in the cause-list.

The petitioner seeks quashing of order dated 02.08.2016
passed by learned Additional Sessions Judge IIIrd, Vaishali at
Hajipur in S.Tr. No. 63/2014, whereby petition of the petitioner
filed under Section 227 of the Cr.P.C. has been rejected.

Learned counsel for the petitioner has submitted that
occurrence is alleged to have taken place in the year 1997 and the
F.I.R. has been lodged on 23.08.2011. There is no mention in the
written report that the victim was minor at the time of alleged
occurrence, i.e. in the year 1997. Charge-sheet has been submitted



against this petitioner for offence under Section 376 of the Indian Penal Code. In the entire case diary, except the informant there is no any independent witness in the case. Physical relationship of the petitioner with informant continued for about fourteen years. Therefore, informant was consenting party.

Learned counsel for the petitioner has relied on a decision of Hon'ble Supreme Court passed in Cr. Appeal No(S) 1395/2015 dated 23.08.2018, wherein it is observed that "*the focal point for decision would be the age of the prosecutrix in order to determine as to whether she was a major so as to give her consent.*" (Copy of aforesaid order is annexed as Annexure-7 to the supplementary affidavit)

Learned counsel for the petitioner has submitted that there is no medical evidence to support the prosecution version. In para 50 of case diary age of victim has been determined to be 32 to 35 years on 20.10.2011.

Learned counsel for the State has submitted that the court below after looking into the evidence has passed the impugned order. Charge has been framed on the basis of *prima facie* material available on record.

This Court after hearing the submission of both parties and looking into allegation in the written report and other material



available in case diary finds that informant has alleged in the written report that she had gone to the house of her elder sister in the year 1997. There she met with this petitioner and became familiar with him. Thereafter she started to go to the house of this petitioner. In May 1997, the petitioner called her in his house and took her to a confidential place and forcibly established physical relationship with her. When she raised hulla, he told that he will marry with her. Thereafter, the petitioner continued to establish physical relationship with informant since 1997 on the pretext of performing marriage with her. The informant became pregnant several times and got aborted.

Learned counsel for the petitioner has submitted that all of sudden the informant learnt that petitioner is going to marry with another lady then she made request to perform marriage with her but the petitioner refused to do so.

Petitioner had earlier filed petition for quashing the cognizance order which was dismissed as withdrawn with liberty to demonstrate his innocence at the appropriate stage vide order dated 21.11.2014 passed in Cr. Misc. No. 30845/2013. Thereafter, petitioner had filed petition under Section 227 Cr.P.C. before the learned Sessions Judge, Vaishali at Hajipur, which was rejected



solely on the ground that the informant has supported the case levelling allegation against this petitioner.

This Court on the basis of allegation in the written report finds that at no stage, there is mention that the informant was minor at the time of alleged occurrence. The informant has alleged that she became familiar with this petitioner and thereafter both started to establish physical relationship with each other. They also established physical relationship several times with consent and also got aborted on the instruction of the petitioner. The informant filed the case when the petitioner refused to perform marriage with her in the year 2011 after about 14 years of the alleged occurrence. Medical report of informant is available in para 50 of case diary, wherein doctor has assessed the age of the victim to be between 32 to 35 years in the year 2011. Therefore, in terms of aforesaid medical report, the victim was major on the alleged date of occurrence, i.e. May, 1997.

Hon'ble Supreme Court has observed in Cr. Appeal No(S) 1395/2015 dated 23.08.2018 that *the focal point for decision would be the age of the prosecutrix in order to determine as to whether she was a major so as to give her consent.*

This Court on the basis of allegation in the written report as well as material available in case diary and the medical report



comes to conclusion that the victim was major and all the act was done by the petitioner with consent of the victim (informant).

Therefore, the court below has committed illegality in passing the impugned order.

In such circumstances, the continuation of instant criminal proceeding against the petitioner will be abuse of process of law.

Therefore, impugned order dated 02.08.2016 passed by learned Addl. Sessions Judge IIIrd, Vaishali at Hajipur along with entire criminal proceeding against the petitioner is hereby quashed.

This Criminal Miscellaneous application is, accordingly, allowed.

(Sanjay Priya, J)

rakhi/-

AFR/NAFR	
CAV DATE	N.A.
Uploading Date	
Transmission Date	

