

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.38019 of 2014

Arising Out of PS. Case No.-59 Year-2008 Thana- JAGDIHSPUR District- Bhojpur

Uday Shankar Singh S/o Late Sarvanand Singh, Resident of Village Gyanpur,
P.S Jagdishpur, District- Bhojpur (Bihar)

... .. Petitioner

Versus

1. The State of Bihar
2. Jitendra Singh S/o Late Anant Singh, Resident of Village- Gyanpur, P.S-
Jagdishpur, District- Bhojpur (Bihar)

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Manoj Kumar

For the Opposite Party/s : Mr. Ashok Kumar Singh (App)

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date : 04-05-2018

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

2. The petitioner seeks quashing of the order dated
24.10.2013, passed by learned *Ad hoc* Additional Sessions Judge,
Vlth, Bhojpur at Ara in Criminal Revision No.119 of 2013.

3. The brief fact giving rise to the case is that the
prosecution filed a petition before the trial court for committing
the case to the Court of Sessions as the evidence of the prosecution
discloses an offence of rape committed by the accused person but
the trial court rejected it, so the informant preferred revision and
the same was allowed.



4. Learned counsel for the petitioner submits that in the First Information Report, there is no accusation of committing rape by the petitioner and police also on conclusion of the investigation submitted charge-sheet not under Section 376 of the Indian Penal Code but later on the prosecution improved the case and on that very basis the case was committed to the Court of Sessions for trial.

5. The Court has gone through the material on record, the FIR as well as the evidence adduced by the prosecution before the trial court. Section 323 Cr.P.C. reads as follows:

“323. Procedure when, after commencement of inquiry or trial, Magistrate finds case should be committed.-If, in any inquiry into an offence or a trial before a Magistrate, it appears to him at any stage of the proceedings before signing judgment that the case is one which ought to be tried by the Court of Session, he shall, commit it to that Court under the provisions hereinbefore contained ¹[and thereupon the provisions of Chapter XVIII shall apply to the commitment so made].”

6. The Section is explicit in the sense that whenever it appears to the Magistrate that at any stage of the proceeding either at the inquiry or trial stage the case is ought to be tried by the Court of Sessions and not triable by Judicial Magistrate, 1st Class due to lack of jurisdiction, even before signing of the judgment it shall be committed to the Court of Sessions. In the present case,



the prosecutrix has stated about the commission of rape. The offence of rape is not triable by a Magistrate rather only Sessions Court has got the jurisdiction to try the case. Considering the evidence on record, the present case requires to be committed to the Court of Sessions for trial as the Court of Magistrate lacks jurisdiction so for the aforesaid reasons, the Court does not find any error in the impugned order.

7. The application stands dismissed.

(Arun Kumar, J)

S.KUMAR/-

AFR/NAFR	NAFR
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