

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.379 of 2019

Arising Out of PS. Case No.-749 Year-2017 Thana- COMPLAINT CASE District-
Kishanganj

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Sima Kumari @ Sima Devi, D/o Late Ram Prasad, W/o Kundan Prasad,
Resident of Village- Nasriganj (Danapur), P.S.-Danapur, District-Patna at
present R/o- Purabpali Medical Collage Road, P.O. + P.S + Distt.- Kishanganj

... .. Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Govt. of Bihar, Patna
2. The District Magistrate, Kishanganj
3. The S.P. Kishanganj
4. The SHO Kishanganj Police Station.
5. Manish Kumar, Son of Late Madan Prasad, Resident of Village - Rampur
Colony, Quarter No. 265 (M), P.S.-Jamalpur, Distt.-Munger.
6. Raju @ Rajiv, Son of Surendra Bihari Verma, Resident of Village –
Jagadispur, P.S.-Jamalpur, Distt.-Munger.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shiw Kumar Prabhakar, Advocate
For the Respondent-State: Mr. Iqbal Asif Niazi, AC to GP-5

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 14-02-2019

In the instant writ petition filed under Articles 226 and 227 of the Constitution of India, the petitioner has prayed for quashing the order dated 03.10.2018 passed by the learned Sessions Judge, Kishanganj in Cr. Revision No.26 of 2018 whereby he has dismissed the revision application against the order dated 19.07.2018 passed by the learned Judicial Magistrate, 1st Class, in Complaint Case No.749 of 2017 whereby he has dismissed the complaint in exercise of power conferred under Section 203 of the Code of Criminal Procedure (for short 'CrPC').



2. It is submitted by the learned counsel for the petitioner that the court below failed to appreciate that the complainant is a poor lady and the respondent nos. 5 and 6 had exploited her sexually on the false pretext of marriage. The complainant and the witnesses examined on her behalf had fully supported the allegations made in the complaint, but the learned Magistrate erroneously dismissed the complaint in exercise of power under Section 203 of the CrPC. The learned Sessions Judge also failed to appreciate that minor discrepancies in the statement of an illiterate or semi-illiterate victim or rustic witnesses cannot be a ground for dismissal of the complaint.

3. *Per contra*, learned counsel appearing for the State submitted that the instant application under Article 226 of the Constitution of India is not maintainable in law. The order passed by the learned Sessions Judge in revision could have been challenged by the petitioner under Section 482 of the CrPC. Since the petitioner has not availed of the statutory remedy available to her, the writ petition deserves to be dismissed. He further contended that in course of inquiry conducted under Section 202 of the CrPC, the learned Magistrate came across several discrepancies in the statement of the complainant and her witnesses. Thus, he has rightly refused to proceed ahead with the



complaint, as no sufficient ground for proceeding in the case was made out. In that view of the matter, if the revisional court has dismissed the revision application, no illegality can be found with the order.

4. I have heard learned counsel for the parties and perused the record.

5. Though the Sessions Court and the High Court have concurrent jurisdiction under Section 397 CrPC, in spite of a bar under Section 397(3) CrPC for a second revision, a petition under Section 482 CrPC would be maintainable against the order of the Session Judge in revisional jurisdiction in view of the law laid down by the Supreme Court in **Krishnan v. Krishna Veni [(1997) 4 SCC 241]** and **Madhu Limaye v. State of Maharashtra [(1977) 4 SCC 551]** under certain exceptional circumstances.

6. The order impugned passed by the learned Magistrate was not without jurisdiction. On scrutiny of the statements on oath of the complainant and of the witnesses and the result of enquiry under Section 202 of the CrPC, the learned Magistrate formed an opinion that there is no sufficient ground for proceeding. While hearing revision against the order of the learned Magistrate, the learned Sessions Judge, Kishanganj also examined the facts of the case and found no illegality or irregularity in the impugned order.



Since the facts of the case have been appreciated by the learned Magistrate and the learned Sessions Judge and they have found no ground to proceed against the accused person, no illegality or perversity can be found in the order impugned.

7. In that view of the matter, I am not inclined to interfere with the impugned order in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India.

8. The application is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.02.2019
Transmission Date	16.02.2019

