

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.577 of 2019

Arising Out of PS. Case No.-118 Year-2016 Thana- MAHILA P.S. District- Araria

Chhabi Das W/o Gopal Kumar Das, resident of village-Ram Nagar, P.S-
K.Hat, District- Purnea

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Bihar, Patna
 2. The Director General of Bihar, Patna
 3. The Deputy Inspector General of Police, Purnea
 4. The Superintendent of Police, Araria
 5. The Superintendent of Police, Purnea
 6. The S.H.O., Mahila P.S., Araria
 7. The S.H.O., K.Hat P.S., Purnea
 8. Deep Prakash @ Divya Prakash Yadav S/o Om Prakash
 9. Priya Prakash S/o Jay Prakash Yadav
- 8 and 9 both are resident of village-Oil Tola, Maranga, P.S.-
K.Hat, District-Purnea.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Bhola Prasad, Advocate
For the Respondent/s : Mr. Sheo Shankar Prasad, SC-8

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 02-04-2019

The sole defect, as pointed out by the registry, is
ignored.

2. Heard Mr. Bhola Prasad, learned counsel for
the petitioner and Mr. Sheo Shankar Prasad, learned counsel for
the State.

3. This application has been filed by the
petitioner for directing the respondent nos. 1 to 7 to arrest the



respondent nos. 8 and 9 in connection with Araria Mahila P.S. Case No. 118 of 2016 registered under Section 376D of the Indian Penal Code (for short 'I.P.C').

4. Learned counsel for the petitioner submitted that after submission of the police report under Section 173(2) of the Code of Criminal Procedure (for short 'Cr.P.C'), the learned Magistrate has taken cognizance of the offence under Section 376D of the I.P.C vide order dated 2.11.2017 and issued summons to respondent nos. 8 and 9. However, till date the respondent nos. 8 and 9 have not appeared before the court as a result of which the trial is not proceeding. He contended that in the given facts and circumstances of the case, it would be in the interest of justice to direct the official respondents to apprehend the two named accused of Araria Mahila P.S. Case No. 118 of 2016.

5. Per contra, learned counsel appearing for the State submitted that upon completion of investigation, the police found the allegations made in the FIR to be false as a result of which final form was submitted. However, the learned Magistrate took cognizance of the offence differing with the police report and issued summons against the respondent nos. 8 and 9. He contended that in case the respondent nos. 8 and 9 are



not complying with the direction of the court, the learned Magistrate has got ample powers under the Cr.P.C. to compel them to appear before the Court.

6. Having heard learned counsel for the petitioner and perused the materials available on record, I find that on the basis of a written report submitted by the petitioner to the S.H.O of Araria Mahila Police Station on 22.12.2016, an F.I.R was registered for the offence punishable under Sections 376D of the I.P.C against the respondent nos. 8 and 9. On completion of investigation, the police submitted final report holding the accusation against the accused persons to be false. The police report submitted by the investigating officer along with materials on record was scrutinized by the learned Magistrate and finding a prima facie case to be made out, he took cognizance of the offence under Section 376D of the I.P.C vide order dated 22.11.2017 and issued summons against the respondent nos. 8 and 9. There is nothing on record to suggest that the summons so issued by the court has been served upon respondent nos. 8 and 9. It has rightly been contended by the learned counsel for the State that in case an accused is not appearing before the court pursuant to issuance of summons, the court concerned has ample statutory powers under the Cr.P.C to



compel them to appear before the court.

7. The extraordinary jurisdiction of this Court under Article 226 of the Constitution of India cannot be used for the purpose of execution of an order passed by the Magistrate.

8. In that view of the matter, I see no merit in this application. The application is dismissed.

(Ashwani Kumar Singh, J)

Md. S/SKSuman.

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.04.2019
Transmission Date	09.04.2019

