

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.56062 of 2019

Arising Out of PS. Case No.-153 Year-2017 Thana- ALAMNAGAR District- Madhepura

Nandan Paswan @ Nandan Kumar Paswan Son of Bhadeshwar Paswan
Resident of Village - Alamnagar, P.S. - Alamnagar, District - Madhepura
... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Anil Kumar Choudhary, Advocate
For the Opposite Party/s : Mr. Zainul Abedin, APP

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 06-09-2019

Heard learned counsel for the petitioner and
learned Additional Public Prosecutor for the State.

2. The petitioner is one of the accused in
Alamnagar P.S. Case No.153 of 2017 registered for offences
under Section 363 and 366A/34 of the Indian Penal Code.

3. According to FIR, the named accused persons
including the petitioner are alleged to have kidnapped the minor
daughter of the informant. On recovery, the victim girl, in her
statement under Section 164 Cr.P.C., stated that on 13.07.2017,
the petitioner and others forcefully took her in their four wheeler
to Khagaria and they were pressurizing for marriage. When the
victim refused for marriage, the accused persons left her at
Udakishunganj. The victim disclosed her age as 15 years and
the learned Magistrate also assessed her age as 15 years.



4. After investigation of the case, the police submitted charge sheet for offences under Sections 363, and 366A/34 of the Indian Penal Code against the petitioner and others. However, by order dated 03.11.2017, the learned Sub-Divisional Judicial Magistrate, took cognizance for the offences under Sections 363, 366A as well as under Section 376/34 of the Indian Penal Code considering the statement of the victim under Section 164 Cr.P.C. and the medical report submitted in the case. Accordingly, the case was committed to the court of sessions and registered as Sessions Trial No.166 of 2017.

5. The petitioner filed a petition in the sessions trial aforesaid stating therein that no offence under Section 376 of the Indian Penal Code is made out. Hence, charge should not be framed under Section 376 of the Indian Penal Code. By the impugned order dated 26.04.2019, the learned Special Judge Additional Sessions Judge-I, Madhepura, has refused the prayer.

5. Submission of learned counsel for the petitioner is that the victim has never stated that rape was committed against her either before the police or in her statement under Section 164 Cr.P.C. The opinion of the doctor cannot be taken into consideration whether rape was committed or not. The



term 'rape' is defined under Section 375 of the Indian Penal Code as to what act/acts would constitute 'rape' and the victim must say that any of the acts enumerated under Section 376 of the Indian Penal Code was committed against her.

6. On careful consideration of the material on the record, I find substance in the submission of the learned counsel for the petitioner. The statement of the victim girl under Section 164 Cr.P.C. is available as Annexure-2 to the application wherein the victim has not alleged that any sexual assault was committed against her. The opinion of the doctor cannot be thrust upon the victim and assumed that this is a case of rape. Hence, the impugned order to the extent that the Court-below has ordered for framing of the charge under Section 376 of the Indian Penal Code also stands quashed. The trial shall proceed for other offences according to law.

7. With the aforesaid observation, the application stands allowed.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.09.2019
Transmission Date	12.09.2019

