

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.16996 of 2021

Arising Out of PS. Case No.-36 Year-2018 Thana- MAHILA PS District- Buxar

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1. SUDARASHAN RAM S/O LATE YAMUNA RAM R/O VILLAGE-GOGAURA, P.S-BUXAR (IND.), DISTRICT-BUXAR.
 2. KAMALBAS RAM S/O SRI SUDARASHAN RAM R/O VILLAGE-GOGAURA, P.S-BUXAR (IND.), DISTRICT-BUXAR.
 3. BOOTANI DEVI W/O SRI SUDARASHAN RAM R/O VILLAGE-GOGAURA, P.S-BUXAR (IND.), DISTRICT-BUXAR.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. TETARI KHATOON W/O AALAM KHAN R/O MOHL-INDRA AAUAS, P.S-KAHALGAON, DISTRICT-BAHAGALPUR.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Rajiv Ranjan Kr. Pandey, Adv.

For the Opposite Party/s : Mr. A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 28-04-2022 Heard learned counsel for the petitioners and learned
A.P.P. for the State.

Challenging the order of dismissal of discharge petition filed by the petitioners under Section 227 of the Criminal Procedure Code, passed by the learned Additional District and Sessions Judge, VI -cum- Special Judge, POCSO, Buxar in POCSO Case No. 25 of 2018, the petitioners have preferred this application under Section 482 of the Criminal Procedure Code seeking quashing of the order impugned herein.

The brief facts of the case, at hands, is than one Ram Bilash Ram took the informant from Kahalgaon to Buxar on the



pretext of performing marriage and she has been kept confined with him as a wife and she has been established physical relation without performing marriage. But, surprisingly, when the informant conceived after wedlock the father of the accused Ram Bilash Ram administered a pill to the informant which amount to abortion of the fetus and thereafter the accused Ram Bilash Ram has refused to perform marriage with the informant and subsequently, it has come to the notice of the informant that petitioners herein are hatching conspiracy to perform marriage of Ram Bilash Ram with another girl. Being left with no option, the informant has lodged the instant F.I.R.

Routine investigation followed after registration of F.I.R. as Buxar (Mahila) PS. Case No. 36 of 2018 and statement of the witnesses came to be recorded and after completing the investigation, the accused persons including the petitioners came to be charge-sheeted.

On the basis of charge-sheet, the learned court below proceeded to frame charges against the petitioners and the petitioners have filed an application under Section 227 of the Cr.PC. seeking their discharge from the charges as leveled in the charge-sheet.

However, learned court below after hearing the parties and considering the materials available on record, by the impugned order, was pleased to reject the application for



discharge filed by the petitioners and fixed the case for charge.

I have heard the learned counsel appearing for the petitioners and learned counsel appearing for the State at length.

Learned counsel for the petitioners submits that the petitioners happen to be father, mother and brother of the accused Rambilash Ram who was having love affair with the victim girl. It is further submitted that the entire F.I.R. is false and fabricated and the same has been registered after lapse of almost one year of consensual live in relation with the Rambilash Ram. It has also brought to the notice of this Court that the victim, who is stated to be major having age of 18 years herself given statement before the Magistrate to the effect that she desires to live with Rambilash Ram, which would be evident from Annexure-2 to this application. It has further been submitted that there appears to be general and omnibus allegation against these petitioners and they have not played any pivotal role in the alleged occurrence.

Further, referring to the facts as projected above, learned counsel for the petitioners has submitted that the learned magistrate without appreciating the materials available on record has rejected the application for discharge vide impugned order dated 08.12.2020 and proceeded to frame charges against the petitioners in mechanical manner. The learned Magistrate while rejecting the discharge petition filed by the petitioners has materially erred in appreciating the evidence



collected during the investigation and passed the impugned order in routine manner, which is bad in law and the same suffers from gross infirmity and deserves to be quashed and set aside.

On the other hand, learned Additional Public Prosecutor submits that the learned magistrate, on the basis of charge-sheet filed by the prosecution and considering the material collected during investigation, has taken cognizance against the petitioners and proceeded to frame charges against the petitioners after finding a prima face case against the petitioners. He further submits that order impugned herein does not require any interference of this Court as the same is based on material fact collected by the police.

Having heard and perused the materials available on record and the rival submission advanced by the parties, I am of the view that at the stage of discharge and considering application under Section 482 Cr.PC., the Courts are not required to go into the merits of allegations and evidence in detail as if conducting mini-trial. Undoubtedly, while considering the question of charge, the Court has power to travel and weigh the evidence for the limited purpose of finding out as to whether a *prima facie* case against the accused is made out or not. Here in the case, at hands, the petitioners are found guilty for the offence that they administered pill to kill the fetus without the consent of the victim and also been instrumental in scheduling another



marriage of accused Ram Bilash Ram with another girl. This fact has also corroborated with the statement of the victim under Section 164 Cr.P.C., therefore, the learned court below after going through the material fact has found a *prima facie* case against the petitioners and, accordingly, rejected the application for discharge.

Regard being had to the facts and circumstances, as aforesaid, this Court is of the view that the impugned order does not require any interference of this Court in exercise of powers conferred under Section 482 of the Cr.P.C. Hence, the application stands dismissed, accordingly.

(Rajesh Kumar Verma, J)

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