

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.35478 of 2021

Arising Out of PS. Case No.-14 Year-2019 Thana- MAHILA PS District- East Champaran

Saif Ali Son of Mustaque Ahmad Resident of Mohalla - Balua Tal, P.O. and
P.S.- Motihari Town, Dist.- East Champaran at Motihari.

... .. Petitioner/s

Versus

1. The State of Bihar
2. State of Bihar And Others

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Sanjay Kumar Pandey, Advocate
For the Opposite Party/s : Mr.Anil Kumar Singh No. 1, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

2 24-11-2022 Heard learned counsel appearing on behalf of the
petitioner and learned APP appearing on behalf of the State.

This application is filed for quashing the proceeding arising out of G.R. No. 2324 of 2019 including the order dated 24.09.2019 passed by learned Chief Judicial Magistrate Motihari, whereby and whereunder the learned Chief Judicial Magistrate was pleased to take cognizance of the offences punishable under Sections 354(A) and 376 of the Indian Penal Code and further to quash the order dated 20.02.2021 passed by learned Additional Sessions Judge-1st Motihari, East Champaran in Session Trial No. 59 of 2021 filed by petitioner under Sections 227 and 228 of the Code of Criminal Procedure and



after hearing the discharge petition rejected the prayer of petitioner by fixing a date for framing of charge against the petitioner, which is erroneous and bad in the eye of law.

Informant/Opposite party has lodged FIR against the petitioner, which registered as Motihari Mahila P.S. Case No. 14 of 2019 dated 07.04.2019 u/s 354 (A), 313 and 376 of the Indian Penal Code and, whereupon after investigation, charge sheet has been submitted by the police under Sections 354(A) and 376 of the Indian Penal Code on 31.08.2019, against the petitioner, and after being satisfied thereto as, *prima facie*, case was made out, cognizance has been taken by learned Magistrate, against the petitioner.

Crux of the prosecution case, that informant, namely, Akhtari Aarju @ Aarju Shekh, aged about 23 years, daughter of one Shekh Wazul, while residing in same locality with petitioner developed friendly relations, where petitioner on several occasions established physical relations with informant on false pretext of marriage, consequent upon, informant developed pregnancy on two different occasions, which was terminated under pressure of this petitioner, who subsequently, refused to marry informant.

Learned counsel for the petitioner submitted that



petitioner is working as a Guest faculty in Government Polytechnic College, East Champaran. It is further submitted that from bare perusal of F.I.R., it appears that the physical relationship was consensual and, as marriage could not be negotiated with informant for certain reasons, the presence of a false implication was made. It is also submitted that, even, the medical report is not suggesting that rape was, even, committed upon the informant. It is also submitted that the informant is a lady of easy virtue and as petitioner is a man having a prospective career, therefore for successful marriage negotiation with the petitioner, the present false allegation was raised to create a pressure. It is also submitted that the allegation of pregnancy and abortions is not supported by desired medical report. Learned counsel further submitted that witnesses of the present case filed their affidavits suggesting thereof, that no such offence as alleged was, ever, committed by this petitioner. It is also submitted that the discharge petition has been rejected by the learned Trial Court vide order dated 20.10.2021 in a very mechanical manner, without applying any judicial mind, as allegation of rape is not appearing true against this petitioner because as per medical/Pathological report of victim, no spermatozoa was found in her vaginal swab. While concluding



the argument it is submitted that the narration of allegation, by taking in totality, does not make any offence, as alleged on its face and, as such, the F.I.R. deserves to be quashed.

Learned APP, while appearing on behalf of the State submitted that the victim has, specifically, alleged this petitioner to commit rape upon her, on false pretext of marriage, through her statement, as recorded under Section 164 of the Cr.P.C., and also to cause her pregnant twice, which was terminated without her consent. It is also submitted by learned APP that, this very act of petitioner clearly suggests on its face, that he was, from very inception, not intended to be act upon the promise of his marriage. It is also pointed by learned APP that non-finding of “Spermatozoa” on Pathological examination of vaginal swab of informant does not lead to a conclusion *ipso-facto* that rape was not committed upon, as rape is a legal finding not a medical one.

Learned APP also submitted that the truthfulness of statement of the witnesses, as furnished through different affidavits, cannot be scrutinized, while dealing with the present petition under Section 482 of the Cr.P.C.

In support of his submissions, he relied upon the report of ***Kamal Pal vs. State of Uttar Pradesh as reported***



through 2019 SSC online Allahabad 3539.

Learned APP further submitted that victim was subjected to emotional, physical, mental and sexual abuse, which clearly falls under the category of heinous offence, where F.I.R. and proceeding emanating therefrom cannot be quashed.

It would be appropriate to reproduce the paragraph no. 102 of the Apex Court decision in the case of ***State of Haryana and Others vs. Bhajan Lal and Others reported in 1992 Supp (1) Supreme Court Cases 335***, which reads as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be



exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first informant report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section



155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of nay offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent persons can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the



Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

Now, coming down to the fact of the case, where specific allegation has been raised against this petitioner to commit rape upon informant, on false pretext of marriage and by taking note of the above mentioned legal positions, this Court find that case of petitioner does not falls within the frame of guidelines as mentioned from Sr. 1 to Sr. 7 of *Bhajan Lal Case (Supra)*, and as such, there is no occasion to quash the present criminal proceeding.



Accordingly, the present quashing petition stands
dismissed, being devoid of merit.

(Chandra Shekhar Jha, J)

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