

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.70898 of 2021

Arising Out of PS. Case No.-11 Year-2019 Thana- MUZFFARPUR COMPLAINT CASE
District- Muzaffarpur

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Prince Kumar, Son of Dilip Prasad Singh Resident of Village- Dhanaur, P.S.-
Katra, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Seema Singh Wife of Bijay Prasad Singh Resident of Village- Dhanaur,
P.O.- Dhanaur, P.S.- Katra, District- Muzaffarpur.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Mazharul Hassan, Advocate

For the Opposite Party/s : Mr. Rajendra Nath Jha, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

- 3 21-07-2022 **1.** Heard the parties.
- 2.** This application is being filed by this petitioner for quashing of order dated 02.11.2021 in connection with Complaint Case No.11 of 2019, registered under Section 376, 511, 323, 307, 324, 354(a) of the Indian Penal Code and Sections 4 and 6 of POCSO Act, wherein, learned A.D.J. 6-cum-Special Judge, POCSO, Muzaffarpur, Bihar, rejected, the petition under Section 228 of the Cr.P.C.
- 3.** The allegation against the petitioner as per summarized statement of prosecution, that on 02.05.2019 at 11:00PM, when minor daughter (victim) of the



complainant was sleeping alone in her room, the petitioner entered into house/room, open his shirt and started to touch body parts of the victim. Consequently, victim woke, but petitioner keep continuing outraging her modesty by advancing threat, on knife point. It further appears that during scuffles, victim also received knife injury on her leg. In the meantime, complainant and other family members, on alarm raised by victim, arrived in room, and after such arrival of family members, petitioner run away from place of occurrence.

- 4.** It is submitted by learned counsel for the petitioner that petitioner has been falsely implicated in the present case, due to land dispute. It is also submitted that victim is the cousin sister of the petitioner, and admittedly, a probate case, bearing no. 52 of 2015 is pending, where father of the petitioner and other family members are parties. Learned counsel further submitted that the medical report is managed as injury found upon the body of the victim girl is not supporting the manner and weapon alleged to assault. It is also submitted that learned trial court took cognizance only against the petitioner though the complaint was lodged against seven (07)



persons, creating a doubt as regard to entire occurrence.

5. Learned APP appearing on behalf of the State, submitted that after considering the fact and found case, *prima-facie*, true against this petitioner, cognizance was taken. It is further submitted by learned APP that allegation is specific against this petitioner for a cognizable offence. Learned APP also submitted that impugned order speaks that a prayer was made by petitioner to frame charge under Section 323/324 of the IPC, which only suggest, his admission as regard to occurrence, and more over, all argument raised by petitioner is beyond the jacket of ratio as laid down by Hon'ble Supreme Court in the matter of ***State of Haryana and Others vs. Bhajan Lal and Others***. It is further submitted that appreciation of evidence is not permissible, while exercising the extra-ordinary power of this Court under Section 482 of the Cr.P.C.

6. I have heard the learned counsel for the petitioner and state, perused the materials on record and gone through impugned order dated 02.11.2021 in connection with Complaint Case No.11 of 2019, passed by learned A.D.J. 6-cum-Special Judge, POCSO, Muzaffarpur,



Bihar. At the outset, it may be relevant to point out that learned Counsel for the petitioner failed to advance any convincing argument as how learned Trial Court failed to apply his judicial mind.

7. It would be appropriate to reproduce the ratio laid down through paragraph No. 102 of the Hon'ble Supreme Court, reported in the matter 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.”

8. It appears from aforesaid factual submission, that there is specific allegation against this petitioner to made an attempt for penetrating sexual assault/rape upon the minor daughter of informant and to also to cause knife injury during the course of occurrence. Hence, there is nothing to gathered from above, that complaint in issue, in entirety do not constitute, *prima-facie*, offence or same is so absurd and improbable on the basis of, which no prudent persons can ever reach a just conclusion to have sufficient ground for proceeding or same is manifestly attended with malafide, as held in ***Bhajan Lal Case (Supra)***.

9. In view of the above, there is no occasion to exercise the extra-ordinary power under Section 482 of the Cr.P.C. of this Court to interfere with the present proceedings.

10. Accordingly, present quashing petition is devoid of any merit to attract the extra-ordinary power of this Court under Section 482 of the Cr.P.C., to quash the order dated



02.11.2021 passed by learned A.D.J. 6-cum-Special Judge, POCSO, Muzaffarpur, Bihar in connection with Complaint Case No.11 of 2019, registered under Section 376, 511, 323, 307, 324, 354(a) of the Indian Penal Code and Sections 4 and 6 of POCSO Act.

11. Accordingly, the present quashing petition, is being dismissed.

(Chandra Shekhar Jha, J)

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