

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.71241 of 2021

Arising Out of PS. Case No.-692 Year-2020 Thana- SIKARPUR District- West Champaran

Chhote Lal Patel, Son of Badan Patel Resident of village - Anjua, Ward No.-
7, P.S.- Shikarpur, District - West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Ghuna Devi Wife of Maksudan Patel Resident of vill. - Anjua, Ward No.- 7,
P.S.- Shikarpur, District - West Champaran

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Rakesh Ranjan, Advocate

For the Opposite Party/s : Mr. Surendra Prasad Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

- 3 21-07-2022 **1.** Heard the parties.
- 2.** This application is being filed by the petitioner for quashing of the order dated 06.03.2021 passed by learned Additional District and Sessions Judge, VII-cum-Special Judge POCSO, Bettiah West Champaran, where cognizance has been taken against the petitioner under Section 376 of I.P.C. and Sections 4/8 of POCSO Act in connection with Shikarpur P.S. Case No. 692 of 2020.
- 3.** As per prosecution story, Chhotelal Patel (petitioner) along with one Sundarma Devi called the minor daughter of informant, in field of sugar cane, where co-accused Suddhir Patel raped upon her. Informant



found her daughter in unconscious condition at place of occurrence, who narrated the occurrence after gaining sense. When matter was reported to petitioner, informant was abused and consequent upon, Shikarpur P.S. Case No. 692 of 2020 has been lodged under Section 376 of the Indian Penal Code and Section 4/8 of the POCSO Act.

- 4.** It is submitted by learned counsel for the petitioner that the present F.I.R. has been lodged after delay of 09 days, without giving any explanation regarding inordinate delay, where, petitioner has falsely been implicated in the present case, due to previous enmity and differences, who are resident of same village. It is also submitted that the victim girl not taken the name of the petitioner in her statement recorded under Section 164 of the Cr.P.C. Learned counsel further submitted that police after investigation, exonerate this petitioner, as none of the prosecution witnesses stated anything incriminating against this petitioner during the course of investigation. Learned counsel further submitted that no sexual assault was found upon victim, as per medical report, which further falsify the allegation. It is further submitted that despite of no evidence, learned ADJ-VII-cum-Special



Judge, POCSO Bettiah, West Champaran took cognizance against this petitioner under Section 376 of the Indian Penal Code and Sections 4/8 of POCSO Act in Shikarpur P.S. Case No. 692 of 2020.

5. Learned APP, while opposing the prayer submitted that issue raised is factual, which may be appreciated during trial only. It is also submitted that petitioner is named in FIR, having specific allegation to call victim.
6. 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.”

7. It appears from aforesaid factual submission, that petitioner seeks quashing of cognizance order, mainly on the ground that name of the petitioner has not been taken in the statement of the victim recorded under Section 164 of the Cr.P.C. It appears that petitioner is a named accused in FIR, having specific allegation to call minor victim in sugar cane field, where rape was committed upon her. Learned Additional District and Sessions Judge VII-cum-Special Judge POCSO, Bettiah, West Champaran, after scrutinizing evidence available on record took cognizance against this petitioner, as the same, *prima-facie*, found true. Issue raised by petitioner questioning the fact of the



case, which can evaluate only during the trial.

8. Hence, there is nothing to gathered from above, that FIR 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 the present case, Charge has already been framed and the present case entered into trial, this Court do not find any occasion to interfere, where offence alleged in cognizable and non-bailable, having specific allegation.

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 06.03.2021 passed by learned Additional District and Sessions Judge, VII-cum-Special Judge POCSO, Bettiah West Champaran, where cognizance has been taken against the petitioner under Section 376 of I.P.C. and Sections 4/8 of POCSO Act in connection with Shikarpur P.S. Case No. 692 of 2020.



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

(Chandra Shekhar Jha, J)

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