

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.10238 of 2020

Arising Out of P.S. Case No.-10 Year-2017 Thana- MAHILA P.S. District- Madhubani

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1. Rajesh Kumar, (Male), aged about 30 years, Son of Mahendra Mishra
Resident of Village - Bwlahi, P.S.- Kelwahi, District - Madhubani.
 2. Dayanand Jha, (Male), aged about 54 years, Son of Late Ganaur Jha
Resident of Village - Belahi, P.S.- Kelwahi, District - Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Aprajita Jha, (Female), aged about 19 years, Daughter of Dewakar Jha
Resident of Village - Magarpatti, P.S.- Rajnagar, District - Madhubani.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Md. Soban Asghar, Advocate
For the Opposite Party/s	:	Mr. Kumar Ranjit Ranjan, A.P.P.
For the O.P. No.2	:	Mr. Jyoti Ranjan Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA

ORAL ORDER

2 03-10-2023 Heard learned counsel for the petitioners; learned

A.P.P. for the State along with learned counsel for the

Opposite Party No.2.

2. The learned counsel for the petitioners, at the
outset, seeks permission to withdraw the quashing
application with respect to petitioner no.1-Rajesh Kumar.

3.Permission is accorded.

4. The learned counsel for Opposite Party No.2
submits that the charges have been framed, the trial has
commenced and is on verge of conclusion.

5. The learned counsel for the petitioners does not
dispute the submission made by the learned counsel for the



Opposite Party No.2, but then submits that in the nature of allegation as alleged in the F.I.R., it would manifest that, *prima facie*, no offence under Section 376 of the Indian Penal Code is made out against the petitioner no.2- Dayanand Jha. It is next submitted that even presuming what has been alleged is true without admitting then also, *prima facie*, no offence under Section 376 of the Indian Penal Code is made out against Dayanand Jha. The learned counsel further submits that the Opposite Party No.2 herein had initially before instituting the present F.I.R., had filed a complaint case being Complaint Case No. 52 of 2017 in the Court of learned Chief Judicial Magistrate, Madhubani against the accused persons including the petitioner in which learned Magistrate after inquiry was pleased to take cognizance of the offence under Section 498A of the Indian Penal Code. The learned counsel next submits that the Opposite Party No.2, before instituting the present F.I.R., had instituted the aforesaid complaint case and when the allegations as alleged in the complaint is compared with the allegations as alleged in the F.I.R., it would manifest that the allegations are akin, if were not *verbatim*. It is next



submitted that when the learned Magistrate, based on the same allegations as alleged in the present F.I.R. after recording evidence of the Opposite Party No.2 as complainant along with her witnesses, was pleased to take cognizance under Section 498A of the Indian Penal Code in the complaint case, then based on the same allegations how an offence under Section 376 of the Indian Penal Code is made out against the petitioner. Learned counsel further submits that no doubt the charges have been framed and the trial is on verge of conclusion, but still the Court can exercise its inherent power under Section 482 of the Cr.P.C, if the Court comes to a conclusion that allowing the criminal proceedings to continue against the petitioners shall be an abuse of the process of the Court, as the informant does not alleges that the petitioner also committed rape.

6. The learned counsel for the Opposite Party No.2 does not rebut the submissions of the learned counsel for the petitioners that this Court has power under Section 482 of the Cr.P.C. to interfere in cases where, *prima facie*, if it appears to the Court that continuation of the proceedings



shall be an abuse of the process of the Court, but then submits that the trial has commenced and is on verge of conclusion and based on the evidence which has come on record, the Trial Court is not denuded of its power under Section 216 of Cr.P.C.

7. After hearing the learned counsel for the parties, the Court is not inclined to proceed with the quashing application as the trial has commenced and is on verge of conclusion, but then the learned Trial Court definitely is not denuded of its powers under Section 216 of the Cr.P.C. alter the charges based on the evidence which has come during the course of trial.

8. Considering the submissions made by learned counsel for the parties and since the trial is on verge of conclusion, as such, the Court refrains from adjudicating the present case.

9. Accordingly, the present quashing application stands disposed of.

(Satyavrat Verma, J)

Nilmani/-

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