

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.29591 of 2015

Arising Out of PS. Case No.-220 Year-2004 Thana- BOCHAHAN District- Muzaffarpur

1. Raju Singh and Anr. Son of Binda Singh, resident of village Man Bishunpur Kashi Rampur, P.S. Bochahan, District Muzaffarpur.
2. Prem Shankar Singh, Son of Late Jamuna Singh, resident of village Ratanpur, P.S. Pipradhi, District Sheohar, At Present resident of village Man Bishunpur/Kashi Rampur, P.S. Bochahan, District Muzaffarpur.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Gajendra Kumar Singh, Advocate Mr. Udit Narayan Singh, Advocate
For the Opposite Party/s	:	Ms. Veena Kumari Jaiswal, App
For the Informant	:	Mr. Alok Kumar Alok, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

3 26-06-2023 Heard learned counsel for the parties.

This application has been filed for quashing of the order dated 10.06.2010, passed by learned Judicial Magistrate, 1st Class, Muzaffarpur in G.R. No. 4279 of 2004 (Tr. No. 3046 of 2014) arising out of Bochaha P.S. Case No. 220 of 2004 by which the learned Magistrate has taken cognizance under Sections 341, 323 and 376 of the Indian Penal Code against the petitioner.

On 24.10.2002 one Shakuntala Devi filed Complaint Case No. 2429 of 2002 before the Chief Judicial Magistrate, Muzaffarpur. The said complaint was sent by



learned Magistrate to Bochaha Police Station under Section 156(3) of the Cr.P.C. to institute a case and investigate. The Bochaha Police instituted a case as Bochaha P.S. Case No. 220 of 2004 and took up investigation.

According to the complainant, while she had gone to attend nature's call, the petitioners pushed her and forcibly tried to commit rape. She raised alarm, upon which the petitioners caused injury with knife and asked her to keep mum, otherwise they would kill her. The petitioners committed rape with her. On her cry, family members and villagers reached there and saw the occurrence. On seeing the public, the petitioners fled away. The complainant went to Sadar Hospital, Muzaffarpur for her treatment but the doctor sent her to police where she gave her statement. On plain Paper, the police took her signature and with connivance of the accused persons the case was not lodged.

It has been submitted by the learned counsel for the petitioners that the informant has filed a case vide Bochaha P.S. Case No. 131 of 2002 for the same offence, in which the police submitted the Final Form but the learned Chief Judicial Magistrate, after differing with the Final Form, taken cognizance against the petitioners, however, subsequently the



petitioners were discharged from the said case vide order dated 22.05.2010.

It has also been submitted by the learned counsel for the petitioners that the Bochaha P.S. Case No. 131 of 2002 was filed on 23.10.2002 and the present complaint case was filed before the learned C.J.M, Muzaffarpur 24.10.2002. The learned Magistrate transferred the said complaint to the police under Section 156(3) of the Cr.P.C. and on the basis of same, the present F.I.R. vide Bochaha P.S. Case No. 220 of 2004 was instituted. It has also been submitted that in the present case, the police submitted the Final Form on 30.11.2006 but the learned Magistrate taken cognizance against the petitioners differing with the Final Form.

It has also been submitted by the learned counsel for the petitioners that there is a land dispute between the petitioners and the informant and because of the said land dispute, the informant lodged the criminal cases against the petitioners. It has also been submitted by the learned counsel for the petitioners that for the same offence one F.I.R. and one complaint case were filed. In the F.I.R., the petitioners were discharged by the trial Court but the informant did not challenge the said order before the higher Court, and therefore, the same



become final and the continuation of the present prosecution is an abuse of the process of the Court.

Learned counsel for the opposite party no.2 has vehemently oppose this application but he is not in a position to deny the fact that for the same occurrence two criminal cases have been filed and in one case, the petitioners have been discharged by the Court below.

Considered the submissions of the parties. From the record, it appears that for the same offence two criminal cases were filed by the informant against the petitioners. In both the cases, Final Form were filed by the police in favour of the petitioners. In the opinion of this Court, once the petitioners were discharged in the first case for the same offence, they cannot be prosecuted in the second case for the same occurrence in view of the law laid down by the Hon'ble Supreme Court in the case of ***T.T. Antony Vs. State of Kerala (2001) 6 SCC 681.***

In view of the aforesaid facts and also in view of the law laid down by the Hon'ble Supreme Court in the case of ***T.T. Antony Vs. State of Kerala (supra)***, this application deserves to be allowed.

Accordingly, this application is allowed and the F.I.R. vide Bochaha P.S. Case No. 220 of 2004 and all



consequential proceedings arising out of the aforesaid F.I.R. including the order dated 10.06.2010 passed by learned Judicial Magistrate, 1st Class, Muzaffarpur in G.R. No. 4279 of 2004, Tr. No. 3046 of 2014, are hereby quashed in the interest of justice.

(Sandeep Kumar, J)

Guddu/-

U		T	
---	--	---	--

