

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1378 of 2018

Arising Out of PS. Case No.-9 Year-2009 Thana- DANDKHORA District- Katihar

Rakesh Kumar Roshan @ Rakesh Kumar Raushan S/o Late Sita Ram
Mandal, Resident of Village- Baluganj, P.S.- Dandkhora, District- Katihar.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Neha Kumari, W/o Rakesh Kumar Roshan @ Rakesh Kumar Raushan, D/o
Madho Mandal, Resident of Village- Baluganj, P.S.- Dandkhora, District-
Katihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Mukesh Kumar Jha, Adv.
For the Respondent/s	:	Mr. Chandrasen Prasad Singh, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

2 13-12-2023 Heard learned Advocate for the petitioner as well as
learned APP for the State.

2. In Sessions Trial No. 342 of 2009, arising out of
Dandkhora P.S. Case No. 09 of 2009, the petitioner was charged
under Section 376 of the I.P.C. During trial on 5th October, 2018,
the present petitioner/accused filed an application stating inter
alia that the defence wants to re-examine the victim
witness/informant on the ground that the marriage between the
victim and the accused has already been solemnized and they
are residing together as husband and wife.

3. Learned A.P.P. by filing a written objection opposed
the said petition filed on behalf of the defence. It is held by the



learned trial court that an offence under Section 376 of the I.P.C. is non-compoundable and, therefore, no compromise can be recorded on the basis of an application under Section 311 of the Cr.P.C. Accordingly, the said application was rejected.

4. Being aggrieved, the accused/petitioner has filed the instant revision.

5. The impugned order dated 27th October, 2018 was passed in a wrong notion that the accused/petitioner wanted to compound the offence under Section 376 of the I.P.C., which is non-compoundable.

6. Section 311 of the Cr.P.C. empowers a Court to summon any witness during trial or enquiry. Part-II of Section 311 of the Cr.P.C. is mandatory in nature, which states that for just decision of a case the Court can summon any witness for examination, re-examination or cross-examination.

7. Though, the allegation has been made of committing rape of the victim by the accused on a particular date, when she was minor. After attainment of majority, the victim willfully married to the present petitioner/accused.

8. In view of such circumstances, it is the duty of the Court to see as to whether the alleged incident is consensual or not, for such purpose the application under Section 311 of the



Cr.P.C. ought to have been allowed.

9. For the reasons stated above, the instant revision is allowed on contest. The order dated 27th October, 2018 is set aside.

10. The learned trial Judge shall given an opportunity to the accused to notify the victim witness/informant for re-examination by the defence.

11. The petitioner is at liberty to act on the server copy of the order.

(Bibek Chaudhuri, J)

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