

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.81683 of 2019

Arising Out of PS. Case No.-23 Year-2018 Thana- MAHILA P.S. District- Munger

MAHI RAI

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Suman Kumar Mishra, Advocate

For the Opposite Party/s : Mr. Nirmal Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

4 03-04-2023 Heard learned counsel for the petitioner and

learned senior counsel for the opposite party no.2, Sri Lalit

Kishore assisted by Sri Indu Bhusan Prasad.

This application is being filed for quashing the
order dated 30.08.2019 in Cr. Revision No. 38 of 2019 passed
by the Sessions Judge, Munger by which the cognizance order
dated 15.02.2019 passed by Judicial Magistrate, 1st Class,
Munger has been set aside and this Cr. Revision No. 38 of 2019
has been allowed.

The prosecution story as per short by the informant
is that she was repeatedly raped by the accused Mukund Kumar
for the last two and half years on the pretext of marriage and
when she pressurize him to marry her, he refused to marry. The
accused Mukund Kumar is said to have been working in S.S.B.
69-B unit, Assam.

The accused had moved a Cr. Revision application
before the Sessions Judge, Munger which has been allowed by



the impugned order dated 30.08.2019. While allowing the Revision, learned Sessions Judge, Munger has relied upon the judgment of the Hon'ble Supreme Court in the case of ***Pramod Suryabhan Pawar vs. State of Maharashtra and Another (2019) 3 SCC 608.***

Learned counsel for the petitioner has submitted that the Cr. Revision was allowed by the learned Court below without hearing the petitioner and he has also submitted that the impugned order is bad in law as from the allegations the offence of rape is made out.

Learned senior counsel for the informant and the learned APP have submitted that even if the petitioner has not been heard by the Revisional Court but once this Court is hearing the matter, the matter may not be remitted back to the Court below for fresh hearing and the matter be heard and decided by this Court as by remitting back the matter the litigation will be prolonged which will not serve the purpose of either of the parties.

Having heard the learned counsel for the parties and after having gone through the records of the case, I find that in this case, the F.I.R. was filed by the informant making allegation of rape but from reading of the F.I.R, it appears that



the parties are major and even if the petitioner and the accused had some relationship, it is a matter of consensual sex and it cannot be termed as rape.

Paragraph 18 of the judgment of the Hon'ble Supreme Court in the case of ***Pramod Suryabhan Pawar vs. State of Maharashtra and Another (supra)*** reads as follows:-

“18. To summarise the legal position that emerges from the about cases, the “consent” of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the “consent” was vitiated by a “misconception of fact” arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act.”

In the present case also, the allegations in the F.I.R. does not indicate that a false promise was made by the accused or that the petitioner is engaged in sexual relationship on the basis of false promise.

There is general and omnibus allegation in the F.I.R. that about two and half years back the accused committed



rape upon her, and thereafter, he repeatedly committed rape.

Considering the law laid down by the Supreme Court in the case of *Pramod Suryabhan Pawar vs. State of Maharashtra and Another (supra)*, this application is dismissed.

(Sandeep Kumar, J)

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