

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.2697 of 2022

Arising Out of PS. Case No.-26 Year-2015 Thana- MAHILA PS District- Aurangabad

NARESH YADAV, Son of Dharmdeo Yadav (But this Fathers name is not point out by informant in Written F.I.R.) The Actual and Real Fathers Name is Lal Kishore Yadav) Resident of Village - Sonar Chak, P.S.- Salaiya, Distt.- Aurangabad.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner : Mr. Dharendra Kumar Sinha, Advocate
For the State : Mr. Sadanand Paswan, Spl. P.P.

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

2 15-02-2024 Heard learned counsel for the petitioner and learned Special P.P. for the State.

2. This application has been filed under Section 482 of the Code of Criminal Procedure on behalf of petitioner for quashing the order dated 01.06.2016 passed by the learned Special Judge (POCSO) in Aurangabad (Mahila) P.S. Case No. 26 of 2015. By the said order, the learned Special Judge took cognizance of offences punishable under Sections 376 and 511 of the Indian Penal Code, Section 8 of the POCSO Act and Section 3(1)(x) of the SC/ST Act against all the two accused persons, including this petitioner.

3. The prosecution story in brief is that on the alleged date and time of occurrence, co-accused Rajendra Yadav entered



the informant's house and forcibly attempted to do wrong deeds. Thereafter, co-accused Rajendra Yadav and this petitioner threatened the father of the informant.

4. Learned counsel for the petitioner assails the order of cognizance dated 01.06.2016 on the ground that in the F.I.R. there is no allegation of attempt to rape against this petitioner. Secondly, he submits that at the relevant time of occurrence, petitioner was not present in the village and as such, no offence is made out against this petitioner. Thirdly, he submits that during course of investigation, the victim in her statement recorded under Section 161 Cr.P.C. has not named this petitioner as one of the perpetrator.

5. On the other hand, learned counsel for the State opposed the statements made on behalf of the petitioner and supported the order of cognizance submitting that these are the defence of the petitioner which can only be looked at the stage of the trial and on these grounds order of cognizance cannot be quashed.

6. From bare perusal of the impugned order, it is apparent that the order of cognizance dated 01.06.2016 has been passed after perusing the detailed written report of the informant, complaint-cum-protest petition and on perusal of the



materials available on record and as such, I do not find any illegality in the impugned order. I do find substance in the submission made on behalf of learned Special Public Prosecutor for the State that the grounds which have been taken by the petitioner to assail the order of cognizance are in the realm of probable defence, which can only be looked at the stage of trial after adducing evidences on behalf of the parties.

7. Accordingly, this quashing application is dismissed.

(Prabhat Kumar Singh, J)

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