

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.24620 of 2021

Arising Out of PS. Case No.-20 Year-2017 Thana- MAHILA PS District- Gaya

-
-
1. SUNNY KUMAR @ SUNNY RAJ GUPTA S/O ARJUN PRASAD R/O MOHALLA- CHANDCHAURA, P.S.- VISHNUPAD, DISTRICT- GAYA
 2. ARJUN PRASAD S/O SAHDEO PRASAD R/O MOHALLA- CHANDCHAURA, P.S.- VISHNUPAD, DISTRICT- GAYA

... .. PETITIONER/S

VERSUS

THE STATE OF BIHAR

... .. OPPOSITE PARTY/S

Appearance :

For the Petitioner/s	:	Mrs. Ritika Rani , Advocate
		Mr. Dinu kumar , Advocate
For the Opposite Party/s :		Mr. A.G.

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

2 22-03-2024 Heard learned counsel for the petitioners and learned
A.P.P. for the State.

2. This application has been filed for quashing the order dated 15-12-2020 passed by Learned Additional District and Sessions Judge – Vith-cum- Special Judge , POCSO , Gaya in POCSO Case No. 43 of 2017 , 149 of 2017 arising out of Mahila P .S Case No. 20 of 2017 by which the application filed by the petitioners for discharge for the offence u/s 366(A) , 376 and 34 of IPC and 4 POCSO Act.

3. The prosecution case in brief is that on March 22,



2017 at about 8 a.m., while the informant, aged about 14 years, was going to Mangla Gauri for worship after taking a bath, while she was returning home, her co-resident Sunny Kumar @ Sunny Raj Gupta (petitioner No. 1) met and requested to take a glass of Lassi. The informant took a glass of Lassi; thereafter, she fell asleep. Taking advantage of the situation, petitioner No. 1 brought the informant to Banaras in a hotel where he had forcefully established physical relationship with her. When the informant protested, petitioner No. 1 threatened to kill her. The informant was brought to her house by petitioner no. 1, where she saw Arjun Prasad (petitioner No. 2), father of Sunny Kumar, and Gunja Kumari, sister of petitioner No. 1, husband of Ghunja Kumari, and all of them assaulted and told her to throw her after killing. The informant was locked in a room by the accused. The informant was persuaded to make a statement as per their choice in a case registered against the family member of these petitioners. Accordingly, the informant did so before the police. The informant was also brought to the court for a statement, and she was also medically examined. On that basis, the aforementioned Fardbeyan police lodged Mahila P.S. Case no. 20 of 2017 dated May 18, 2017 for the offenses u/s. 366A, 376, and 34 of I.P.C. and Section 4 of the POCSO Act against the



petitioners and the other 5 accused persons.

4. The learned counsel appearing on behalf of the petitioners submits that the police, after investigation, submitted charge sheet against these petitioners for the offenses u/s 366A, 328, 323, 120(B) of the IPC and Section 4 of the POCSO Act. , and thereafter, cognizance has been taken by learned Court below against these petitioners for the offenses u/s 366A, 328, 323, 120(B) of the IPC and Section 4 of the POCSO Act. The petitioners filed a petition on October 3, 2020, for dishonesty in POCSO Case No. 43 of 2017 rising out of Mahila P.S. Case no. 20 of 2017 for the charges under 366A, 328, 323, 120(B) of the IPC and Section 4 of the POCSO Act.

5 . Learned counsel for the petitioners further submits that petitioners seek quashing, on the ground that earlier on the statement of Rekha Devi, mother of the informant, police registered Vishnupad P.S. Case no. 70/2017 dated March 25, 2017 for the offense u/s 366A, 34 IPC against these petitioners, and others on the allegation that petitioner No. 1 has abducted Soni Kumari on March 22, 2017. During the course of the investigation, victim Mausmi Kumari was medically examined by the doctor, who assessed the age of the victim as 18 to 19 years and found no recent sexual intercourse or any mark of



violence on the private part of the victim. He next submits that the statement of the victim was recorded under Section 164 of Cr. P. C., where the victim has accepted that she had gone to Deoghat, where his father was not present, and then she came back to Chandchaura. In the meanwhile, the mother of the informant had lodged a case, and she wanted to live with her mother, but her mother had assaulted her, so she left the house. Police, after investigation, submitted the final form in Vishnupad P.S. Case no. 70 of 2017, which was accepted by the learned CJM, Gaya, on April 6, 2019. The learned counsel for the petitioners further submits that from the aforementioned facts, it is apparent that the victim is a major, and during medical examination, the The victim girl was medically examined, but the doctor did not find any external or internal injury on any part of the body, including private parts. The doctor has opined that it is very difficult to say whether recent intercourse has been committed, and as such, the allegation of rape is totally false, and as such, the present FIR is absolutely false and concocted. This case has been filed only with a view to harass and humiliate these petitioners. He finally submits that, in view of the aforementioned facts, the order of cognizance is bad and fit to be quashed.



6. On the other hand, learned A.P.P. for the State has vehemently opposed the statements made on behalf of the petitioners and supported the impugned order. He has submitted that it is the specific case of the prosecution that these petitioners along with other accused persons committed the heinous offence. The victim is minor, aged about 14 years and petitioner No. 1 has committed rape with her. It is next submitted that Police has recorded the statement of witnesses as well as statement of victim was also recorded under Section 164 Cr.P.C.. The victim as well as the prosecution witnesses have supported the the prosecution case. He next submits that at the stage of framing of charge, the Court has to consider as to whether there is prima facie sufficient material available or not on record to frame the charges. Rest of the points raised by the petitioners are in the realm of defence which can only be seen at the stage of trial, after adducing evidence on behalf of the parties.

7. Having heard the rival submissions advanced by learned counsels appearing on behalf of the parties and perused the materials available on record, this Court is of the view that as per the prosecution case, these petitioners along with other co- accused persons kidnapped the minor victim and petitioner



No. 1 had committed rape with her. The prosecution case has been duly supported by the witnesses. The victim in her statement recorded under Section 164 Cr.P.C. has supported the prosecution case. After investigation, the police submitted charge-sheet and as such there is sufficient materials to frame charges against these petitioners. It is settled law that the defence of an accused person cannot be considered at the stage where the accused person wants to be released under Section 227 of the Criminal Procedure Code, 1973. The Hon'ble Apex Court in the case of *M. E. Shivalingamurthy versus Central Bureau of Investigation, Bengaluru* reported in (2020) 2 SCC 768 held that the defence of an accused person cannot be considered at the stage where the accused person cannot be considered at the stage where the accused person wants to be released under Section 227 of the Cr. P . C . When an accused person requests dismissal under Section 227 of the Criminal Procedure Code, 1973, no consideration of the accused's defence is to be made. At this stage, only the facts mentioned in the F.I.R./Complaint or the materials collected during course of investigation along with the charge-sheet are to be seen. If the materials placed before the court disclose grave suspicion against the accused, which has not been properly explained, the



court will be fully justified in framing of charges and proceeding with the trial.

8 . In view of the aforesaid facts and circumstances, this court does not find any illegality, irregularity or error in the impugned order.

9. Accordingly, this application is dismissed.

(Prabhat Kumar Singh, J)

Koushik/-

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

