

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.23548 of 2023

Arising Out of PS. Case No.-259 Year-2018 Thana- MASHRAK District- Saran

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1. Mahesh Ojha S/o Late Bikrama Ojha Resident of Vill.-Kawalpura, P.S.-Mashrakh, Dist.-Saran at Chapra
 2. Shambhu Pandey S/o Late Muni Lal Pandey Resident of Vill.-Kawalpura, P.S.-Mashrakh, Dist.-Saran at Chapra

... .. Petitioner/s

Versus

1. The State of Bihar
2. Pushpa Devi W/o Shri Manu Das Resident of village-Mathiya, P.O.-Kawalpura, P.S.-Mashrakh, Dist.-Saran at Chapra

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Md. Anis Akhtar, Adv. Mr. Rananjay Kumar, Adv.
For the Opposite Party/s	:	Mr. Rajiv Nayan, A.P.P.
For the Complainant	:	Mr. Radha Mohan Singh, Adv. Mr. Devendra Narayan Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

3 18-03-2024 Heard learned counsel for the petitioners, learned A.P.P. for the State and learned counsel appearing on behalf of complainant / opposite party no. 2.

2. This petition has been filed under Section 482 of the Code of Criminal Procedure for quashing the order dated 09.01.2023 passed in Mashrakh P.S. Case No. 259 of 2018 (arising out of Complaint Case No. 2927 of 2017) by the learned Additional District & Sessions Judge-I, Saran at Chapra, whereby the application filed under Section 227 of the Cr.P.C. for discharge of petitioners from the liability of offences punishable under Sections 354, 376 and 511 of the Indian Penal Code, has been rejected, with a direction to accused persons to



remain present for framing of charge.

3. The prosecution case, as narrated in complaint petition, is that on 16.09.2017 at about 12 noon, these two petitioners disrobed the complainant and thereafter, attempted to commit rape on her, but on alarm raised by complainant/O.P.2, others village came there and both petitioners, after snatching Rs. One thousand case and articles worth Rs. 10,000/-, fled away from there. The complaint, filed by the complainant, was referred to the police station under Section 156(3) of the Cr.P.C. and thereafter, an F.I.R., vide Mashrakh P.S. Case No. 259 of 2018, was registered under Sections 341, 323, 504, 379, 511/34 of the Indian Penal Code.

4. Learned counsel for the petitioners submits that petitioners have been falsely implicated in this case out of personal grudge. The police, after proper investigation, did not find the case true against these petitioners and as such, submitted final form against them. However; on the protest petition, the learned Court below took cognizance against these petitioners under Sections 354, 376, 511 of the Indian Penal Code. Learned counsel for the petitioners further submits that the present complaint was managed and planted by one Bhikhar Ray due to ulterior motive and as such, continuation of the



proceeding for offence under Sections 354, 376, 511 of the Indian Penal Code is an abuse of the process of the Court.

5. Learned counsel for the opposite party no. 2 vehemently opposes the submission made on behalf of petitioners and while supporting the impugned order, submits that there was sufficient material available on record to take cognizance. At the stage of framing of charge, the learned Court below is only required to evaluate the material and documents on record with a view to find out the existence of all the ingredients. At this stage, it cannot be said that no prima facie case is made out against these petitioners and as such, learned Court below has rightly rejected the discharge petition filed on behalf of petitioners.

6. Heard learned counsel for the parties. It is settled law that at the time of framing of charge, the points raised on behalf of the petitioners are in the realm of defence, which cannot be looked at this stage. The Hon'ble Supreme Court, in the case of *M. E. Shivalingamurthy vs Central Bureau of Investigation*, reported in **2020 (2) S.C.C. 768**, has held 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 Cr.P.C.



7. Considering the facts and circumstances of this case and the law laid down by the Hon’ble Supreme Court in aforesaid case (*supra*), this petition is devoid of any substance and is dismissed accordingly.

(Prabhat Kumar Singh, J)

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