

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.54742 of 2018**

Arising Out of PS. Case No.-31 Year-2017 Thana- MAHILA PS District- Buxar

Manish Kumar son of Anil Kumar Resident of Mohalla - Maulabagh Patel  
Nagar, Police Station - Ara Nawada, District - Bhojpur.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

**Appearance :**

For the Petitioner/s : Mr. Rahul Nath, Adv.

For the Opposite Party/s : Mr. Chandrasen Prasad Singh, APP

**CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI**  
**ORAL ORDER**

2      31-07-2024      The Sub-Divisional Judicial Magistrate, Buxar took  
cognizance of the offence under Sections  
341/323/504/506/376/120B of the I.P.C. against the petitioner  
on submission of charge-sheet in connection with Mahila P.S.  
Case No. 31 of 2017.

2. The said order of taking cognizance is under  
challenge in the instant application under Section 482 of the  
Cr.P.C. stating, inter alia, that the order of taking cognizance is  
bad on the following grounds:-

(i) The informant and the accused/petitioner were  
known to each other. Both of them are major. While informant is  
a Block Teacher in Girls Middle School, Bihta, Bhojpur. The  
petitioner is an employee of Punjab National Bank of Tarari  
Block. Informant had a Bank Account in the Bank where the



petitioner used to work. During Bank transaction, an intimacy developed between the petitioner and the informant. The petitioner borrowed a sum of Rs. 50,000/- (fifty thousand) for the marriage of his sister from the informant. On 27<sup>th</sup> June, 2017 when the informant went to take back her money from the petitioner, she was allegedly raped by the petitioner.

(ii) The above statement made by the informant suggests that physical relationship, if any, between the informant and the petitioner was consensual.

(iii) The incident took place on 27<sup>th</sup> June, 2017, while the F.I.R. was lodged after a lapse of one month i.e. on 26<sup>th</sup> July, 2017. There is unexplained delay in lodging the F.I.R.

(iv) The medical examination report of the informant does not suggest any such incident of rape committed upon her.

3. All the issues raised by the learned Advocate for the petitioner and recorded hereinabove can only be decided on the basis of an evidence in trial.

4. The informant stated that an intimacy developed between her and the petitioner, but due to such intimacy it cannot be said that alleged physical relationship was consensual. Secondly, delay in lodging F.I.R., in a case of sexual assault can be condoned under the facts and circumstances of a particular



case during trial. Thirdly, the medical examination report clearly states that the hymen of the informant was having old tear. This suggests physical intercourse. I have already stated that whether such physical intercourse was consensual or against the consent of the petitioner can only be decided during the trial of the case. The above issues cannot be decided and a criminal case under Section 376 of the I.P.C. cannot be quashed on the above stated grounds.

5. For the reasons stated above, this Court finds that the instant Cr. Misc. case is devoid of any merit and accordingly, the same is dismissed.

**(Bibek Chaudhuri, J)**

pravinkumar/-

|   |  |   |  |
|---|--|---|--|
| U |  | T |  |
|---|--|---|--|

