

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.58605 of 2022

Arising Out of PS. Case No.-236 Year-2013 Thana- MAJHAULIA District- West Champaran

PRAMILA DEVI Wife of Naveen Kunwar Resident of village- Patbandi, P.S-
Majhauria, District- West Champaran

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Asif Kalim, Advocate
For the Opposite Party/s	:	Md. Mushtaque Alam, APP
For O.P. no. 2	:	Mr. Bimlesh Kr. Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT

Date : 12-07-2024

1. Heard learned counsel for the petitioner and learned APP for the State assisted by learned counsel for the informant.

2. The petitioner has filed the instant application praying for quashing the order dated 10.5.2022 passed in Majhauria P.S. Case no. 236 of 2013 whereby the learned Special Judge, POCSO Act-cum-Additional District and Sessions Judge-VIth, West Champaran at Bettiah allowed the petition under section 319 of the Cr.P.C and was pleased to hold that there is *prima facie* material available on record to proceed against the petitioner as an accused in a case under section 312 of the Indian Penal Code.

3. The prosecution case on the basis of written



statement filed by the informant Premlata Kumari on 9.6.2013 before the Officer In-Charge of Majhaulia Police Station alleges *inter alia* that about 5 months ago while she was working as a cook at the place of Naveen Kunwar, he had committed rape on her. As a result of threats given by him, she did not disclose about the occurrence to any person. At present she is pregnant.

4. On the statement of the informant, an F.I.R being Majhaulia P.S. Case no. 236 of 2013 was registered on 9.6.2013 under section 376 of the Indian Penal Code. On investigation charge-sheet was submitted on 28.11.2013 under sections 376 and 312 of the Indian Penal Code against the F.I.R named accused. It further transpires from the record that the trial proceeded and by judgment dated 19.3.2016 passed in S. Tr. no. 1124 of 2013 by the learned Additional District and Sessions Judge-VI, West Champaran at Bettiah the sole accused Naveen Kunwar was held guilty under section 376 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs. 3,00,000/-. The said Naveen Kunwar filed an appeal in the Patna High Court which was registered as Cr. Appeal (SJ) no. 268 of 2016. By judgment dated 18.12.2019 passed in Cr. Appeal (SJ) no. 268 of 2016, this Court was pleased to set aside the impugned judgment and



the appeal was allowed. Further by the said order this Court remitted back the matter to the learned Court below to proceed afresh after invoking the provisions as envisaged under sections 216 and 217 of the Cr. P.C. Further direction was given to conclude the trial within 6 months.

5. On the case of the accused Naveen Kunwar having been remitted back, the examination of the prosecution witnesses commenced in the Court of learned Additional District and Sessions Judge-VIth-cum-Special Judge, POCSO Act, West Champaran at Bettiah. The victim (PW1) followed by Ramesh Kunwar (father of the victim) (PW2), Surendra Kumar (police personnel) (PW3) and Dr. M.M Rahim (PW4) were examined on behalf of prosecution.

6. The certified copy of the deposition of PW4 (Dr. M.M Rahim) has been made available at the Bar which was taken on record.

7. A petition was filed on behalf of the informant through the prosecution on 5.4.2022 under section 319 of the Cr. P.C to which a rejoinder was filed on 7.4.2022. After having considered the material on record, the learned trial Court by its order dated 10.5.2022 allowed the petition under section 319 of the Cr. P.C filed on behalf of prosecution. It is against this order



dated 10.5.2022 that the instant application has been preferred.

8. Learned counsel for the petitioner submitted that the F.I.R was registered in the case more than 10 years ago making Naveen Kunwar as the only accused therein. No allegation were levelled against his wife, the petitioner herein. It is further submitted that there is no material in the deposition of the witnesses on the basis of which the petitioner could be summoned and the learned trial Court has committed an error in allowing the petition filed by the prosecution under section 319 of the Cr.P.C. As such, it is prayed that the instant application be allowed and the order impugned dated 10.5.2022 allowing the application under section 319 of the Cr.P.C and summoning the petitioner herein to stand trial be set aside.

9. The application is opposed by learned APP for the State assisted by learned counsel for the informant. It is submitted by learned APP for the State that from perusal of the deposition of the witnesses especially the deposition of the victim (PW1) and her father (PW2) it would clearly be evident that there is substantial material for summoning the petitioner to stand trial in the case. The learned trial Court has rightly allowed the petition under section 319 of Cr.P.C. There is no merit in the instant application and the same be dismissed.



10. Having heard learned counsel for the parties and having perused the material on record, this Court finds that so far as the F.I.R registered by the informant is concerned, Naveen Kunwar was the sole accused. As stated above, the conviction of the said Naveen Kunwar having been set aside vide order dated 18.12.2019 passed by the Patna High Court and the matter having been remitted back, charge was framed and the examination of witnesses commenced.

11. PW1 (the victim) who was examined on 7.2.2022 has stated that at the time of occurrence she was 14 years old. Naveen Kunwar committed rape on her on a regular basis and used to threaten her that he would kill her. She became pregnant before her marriage and soon after marriage, her in-laws forced her out of the house stating that she was pregnant. She states that she came back and went to the house of the accused Naveen Kunwar. On narrating about her troubles, it is stated that the wife of Naveen Kunwar gave her some medicine as a result of which she started to bleed. She lodged the case at Majhaulia Police Station from where she was taken by the police to the hospital for medical examination.

12. PW2 (Ramesh Kunwar) happens to be the father of the victim. In his deposition he has supported the



prosecution case and narrated about the victim telling him about the wife of Naveen Kunwar giving her some medicine. Thereafter on being taken to hospital the doctor stated that she had aborted as a result of the medicine given to her.

13. Dr. M.M Rahim, who was posted as Medical Officer at PHC, Majhauriya, on 9.6.2013 was examined as PW4. He has stated in his deposition that he examined the victim. He states that the victim complained of pain in abdomen followed by spontaneous abortion. The medical report of the victim is in his pen and signature.

14. Thus from the deposition of the prosecution witnesses especially PW1 and PW2 it would clearly be evident that there is substantial material against this petitioner that on the victim having been ousted from the home of her in-laws and having gone and narrated about the same to the accused Naveen Kunwar and his wife (petitioner herein), the petitioner gave the victim a medicine as a result of which she aborted. As such, the learned trial Court passed its order dated 10.5.2022, impugned herein, having rightly allowed the application under section 319 of the Cr.P.C filed on behalf of prosecution and summoning the petitioner in view of the fact that *prima facie* material was available to proceed against the petitioner under section 312 of



the Indian Penal Code. The Court finds no illegality in the order
impugned and no merit in the instant application.

15. The application is dismissed.

(Partha Sarthy, J)

Harsh/-

AFR/NAFR	NAFR
CAV DATE	27.6.2024
Uploading Date	15.7.2024
Transmission Date	15.7.2024

