

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.22146 of 2024

Arising Out of PS. Case No.-758 Year-2017 Thana- BHAGALPUR COMPLAINT CASE
District- Bhagalpur

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Manjan Devi, D/o Rabindra Nath Jha, W/o Subansh Jha R/o Mohalla/Village-
Bhattachak, Pathakdih, P.S.- Amdanda, District- Bhagalpur

... .. Petitioner

Versus

1. The State of Bihar
2. Haribansh Jha, Son of Sadanand Jha, R/o Mohalla/Village- Bhattachak, P.S.-
Amdanda, District- Bhagalpur

... .. Opposite Parties

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Appearance :

For the Petitioner/s	:	Mr. Ambrish Jha, Advocate Ms. Shashi Priya Pathak, Advocate
For the State	:	Mr. Navin Kumar Pandey, APP
For the O.P. No.2	:	Mr. Pravin Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 29-04-2025

Heard learned counsel for the petitioner and learned
counsel appearing on behalf of O.P. No.2.

2. The present application has been preferred by
the petitioner for quashing of the order dated 23.11.2023
passed by learned 1st Additional District and Sessions Judge,
Bhagalpur in S.T. No.816 of 2018, whereby the learned trial
court has rejected the petition filed by the petitioner under
section 311 of the Code of Criminal Procedure (in short
'CrPC') for direction to hold DNA test of accused victim
woman (petitioner) and her child.



3. The prosecution story in brief is that the petitioner is a widow lady, her husband died on 24.10.2004 living behind his wife (petitioner), two daughters and one son. Thereafter, the petitioner has brought her children anyhow in her in-laws' house. After the death of her husband, she was continuously living her in-laws house with her in-laws members. After sometime, she felt that her brother-in-law, namely, Haribansh Jha (O.P. No.2) kept dirty eye upon the petitioner. She made complain to her in-law's but, they ignored her complain. Later on, Haribansh Jha assured the petitioner that he will marry with her for which his parents also gave consent. Thereafter, Haribansh Jha (O.P. No.2) convinced the petitioner that he will marry with the petitioner soon and established physical relation with the petitioner. From the said relationship, the petitioner conceived two time but, O.P. No.2 and other in-law's members forcibly aborted her pregnancy. In the meantime, when petitioner asked to O.P. No.2 for marriage, he ignored the same by one pretext or another. When she become pregnant 3rd time, the O.P. No.2 again put pressure for abortion but, she gave birth to a



male child against the will of O.P. No.2 and her in-law's members. After the birth of the child, she was putting pressure upon O.P. No.2 for marriage. Thereafter, the O.P. No.2 with the help of his family members married to some another lady in Jharkhand. When the petitioner came to know about the fact, she raised objection upon which, the O.P. No.2 and her in-law's members badly assaulted the petitioner and finally she was ousted from her in-law's house.

4. With aforesaid allegation, criminal complaint case bearing No. (C) 758 of 2017 dated 11.05.2017 has been filed before the learned Chief Judicial Magistrate, Bhagalpur. The learned Chief Judicial Magistrate has transferred the case to the court of learned Judicial Magistrate-1st Class, Bhagalpur for further proceeding. The learned Jurisdictional Magistrate after considering the statement of complainant on solemn affirmation and enquiry witnesses, took cognizance of the offence under Section 376 of the Indian Penal Code (in short 'IPC') against the O.P. No.2 and issued summons to face trial.

5. During trial, the petitioner filed a petition under



Section 311 of the CrPC before the trial court for holding D.N.A. test of accused, victim women and the born male child namely, Prashant Kumar to ascertain paternity of the child, which claimed as necessary to prove the charges against O.P. No.2 but, the learned Trial Court without considering the case of the prosecution rejected the application of the petitioner on the basis of erroneous ground vide order dated 23.11.2023.

6. Ms. Shashi Priya Pathak, learned counsel appearing for the petitioner submitted that the trial court has failed to consider that the petitioner is the guardian of the male child and she has herself given consent for DNA Test of her minor son for proving the paternity of the child. She further submitted that the result of the DNA Test will enough to prove the charges against the O.P. No.2, which will also establish the right of the said minor child. It is further submitted that the learned Sessions Judge has failed to consider that any investigating officer has not investigated the case so that sample of semen or blood could be taken at the time of investigation for medical examination. It is further submitted that the petitioner may claim for DNA Test at any



stage of the trial for proving the case of prosecution. It is further submitted that so far as the privacy of the minor child is concerned, it is the right of the said minor child that he may know, who is his biological father. It is further submitted that the learned Sessions Judge has not considered the case in right perspective and rejected the petition filed under Section 311 of the Cr.P.C. in very whimsical manner and that too without applying his judicial mind, and, therefore, the impugned order dated 23.11.2023 is bad in the eye of law and on said score, same is fit to be quashed/set aside.

7. Mr. Aditya Narain Singh No.1, learned counsel appearing on behalf of O.P. No.2 while opposing the application submitted that the charges have been framed against the accused vide order dated 14.12.2018. It is further submitted that the five prosecution witnesses including the victim have already examined in this case. He further submitted that the present petition under Section 311 of the Cr.P.C. has been filed by the petitioner only to delay the trial. It is further submitted that the petition has not been filed by the investigating officer because there is no further



investigation required in this case.

8. It would be apposite to reproduce Section 311 of the Cr.P.C. for better understanding of the case, which is as under:-

"311. Power to summon material witness, or examine person present.- Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case."

9. It would be apposite to reproduce the impugned order dated 23..11.2023 as passed by learned 1st Additional Sessions Judge, Bhagalpur for the sake of convenience, which is as under:-

"Heard the learned Public Prosecutor, private counsel for the Informant and the learned counsel for the accused.

The prosecution has filed application under Section 311 of the Code of Criminal Procedure for direction to the accused to appear for conduct a DNA test so that his



DNA can be matched with the victim and the child allegedly born from the lions of accused.

The accused filed reply to the application and took objections that the petition filed by the complainant dated 31.07.2023 is not maintainable in the eyes of law. He further submitted that the such type of petition to conduct DNA test has never brought by the prosecution before the learned Court during the investigation. After lapse of 7 years this petition has been filed only to delay the trial. The facts enumerated in the petition does not required to be considered here at this stage. It is therefore request to reject the petition dated 31.07.2023 filed by the complainant.

The prosecution story is that the complainant-victim is a widow. The accused Harivansh Jha established physical relations with the complainant on the pretext of marriage. Whenever the complainant became pregnant, the accused aborted her foetus, and the accused continued to established physical relations with complainant. After that the complainant again became pregnant and delivered a male child. The complainant asked for marriage, but the accused denied it. The accused



Harivansh Jha along with other accused persons assaulted the complainant and threatened her with dire consequences. The accused Harivansh Jha married another girl.

The public prosecutor argued that the accused had sexually assaulted the victim multiple times, which led to the victim's pregnancy and delivery of a male child. The lawyer claimed that a DNA test is crucial to prove the rape charge and to determine the fatherhood of the victim's child.

The learned counsel for the accused has vehemently opposed the prayer of the learned counsel for the complainant. He further submitted that Cognizance against the accused Harivansh Jha has already been taken by the learned Trial Court and the case of the accused has been committed to the court of Sessions vide order dated 08.10.2018. The charges have been framed against the accused vide dated 14.12.2018. The five prosecution witnesses including victim have already been examined in this case. At the stage this petition has been filed by the complainant only to delay the trial. The petition has not been filed by the investigation officer, because there is no further investigation is required in this case.

There is no doubt that DNA can be got



matched in order to corroborate the offence of Rape as provided in Section 53 A of Code of Criminal Procedure and as held by Hon'ble Supreme Court in the case of Krishan Kumar Mallik versus State of Haryana (2011) 7 SCC 130. Section 53A reads as under: (1) When a person is arrested on a charge of committing an offence of rape or an attempt to commit rape and there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of such offence, it shall be lawful for a registered medical practitioner employed in a hospital run by the Government or by a local authority and in the absence of such a practitioner within the radius of sixteen kilometers from the place where the offence has been committed by any other registered medical practitioner, acting at the request of a police officer not below the rank of a sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the arrested person and to use such force as is reasonably necessary for that purpose.

I have heard both the parties and gone through the record. The petitioner seeks to get match DNA of child with DNA



of accused in order to prove the Rape. From the perusal of record, it seems that no sample of semen or blood was taken at the time of investigation. It is not the case of the prosecution that sample of semen or blood found on the body or the clothes or at the spot is to be matched with the DNA of the accused. Although, DNA of accused can be got examined of the purpose of proving rape which could have been done by way of matching semen/blood placed on the person/cloth of victim but to allow match of DNA of accused with DNA of minor child involves privacy of minor child, which cannot be allowed. The offence of Rape can be proved by other positive evidence collected at the time of investigation. In the interest of justice, fair play and keeping rights of the minor child in view, I am of the view that paternity of the minor child is not necessary to be determined in this case.

Accordingly, the petition filed by the complainant dated 31.07.2023 to conduct the DNA test is hereby rejected.

(Arvind Kumar Sharma)
1st Additional Sessions judge
Bhagalpur"

10. It appears from perusal of record that



Investigating Officer of this case has not collected sample of semen or blood at the time of investigation so as to match the DNA of victim with DNA of accused in order to prove the rape. It is not the case of the petitioner that semen or blood found on the body or the clothes or at the spot which requires to be matched with the DNA of the accused. It further appears that petitioner has filed the petition under Section 311 of the CrPC after lapse of seven years of filing of this case only to delay the trial. The trial court has rightly held that the offence of rape can be proved by other positive evidence collected at the time of investigation and the paternity of the minor child is not necessary to be determined in this case.

11. In view of aforesaid, the present application stands dismissed, being devoid of any merit.

12. Let a copy of this order be sent to the learned trial court forthwith.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03-05-2025
Transmission Date	03-05-2025

