

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.68127 of 2024

Arising Out of PS. Case No.-51 Year-2022 Thana- MAHILA PS District- Darbhanga

Ajay Prasad, S/O Uday Narayan Prasad, Resident of Village- Sareya Ward
No. 4, Gopalganj, P.S- Gopalganj, District- Gopalganj.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Kakoli kole, wife of Abhay Kumar, D/o Bidhu Bag, Resident of C/o Late Bidhu Bag, Baksi Tola Lane, Ramraya Tola, P.S. Jagacha, P.O. Santragachi, District- Howrah, West Bengal.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Murli Manohar Singh, Advocate
For the Opposite Party/s : Mr. Navin Kumar Pandey, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 27-02-2025

1. Heard learned counsel appearing on behalf of the parties.

2. The present application has been filed for quashing the order dated 24.06.2024 passed by learned 1st Addl. Sessions Judge, Darbhanga, in Sessions Trial No. 505/2023 arising out of Mahila P.S. Case No. 51/2022, for the offences punishable under Section 319 of the Code of Criminal Procedure.

3. Prosecution case in brief is that one Kakoli Kole, W/o Atanu Kole stated in her written report that her husband was working with M/s Indian infoland Finance Limited,



situated at Kolkata and her husband has committed suicide for defalcation of money of Rs. 10 lakh of company. After death of her husband, co-accused Abhay Kumar developed friendship with her and called her through mobile at Darbhanga (Bihar). In course of talking, love affairs has been developed but she disclosed that she is a widow and has 10 years old male child. On first visit, she was made stay in one flat. She was attempted to be raped but she protested. Therefore, she returned Kolkata. It is further alleged that the petitioner again sent him ticket for coming Darbhanga. She again come and stayed at residency Hotel, Lalbagh, P.S. Sadar, Darbhanga, where she was raped. It is further alleged that she again raped between 04.04.2022 to 25.06.2022. Thereafter, she alleged that co-accused Abhay Kumar continued to give her an assurance of marriage. In the meantime, she became pregnant, co-accused namely Abhay Kumar has compelled to abort, on such allegations case has been instituted against accused Abhay Kumar.

4. It is submitted by learned counsel appearing for the petitioner that after investigation, police submitted



charge sheet for the offences under Sections 498A and 323 of the Indian penal Code against named accused Abhay Kumar only. The learned Magistrate took also cognizance only accused Abhay Kumar but during the course of trial, informant filed an application on 16.05.2024 before the learned Addl. Session Judge 1st, Darbhanga under Section 319 of the Cr.P.C., where on the basis of deposition of opposite party no. 2 as recorded in Session Trial No. 505 of 2023 being PW-1, the petitioner was summoned to face trial by exercising power under Section 319 of the Cr.P.C. along with co-accused Manoj Kumar.

5. It would be apposite to reproduce para nos. 13, 14, 15 and 16 of the impugned order itself for the better understanding of the fact.

“13. During the trial. the prosecutrix was examined on 20.04.2024. The perusal of her testimony discloses that in para-18 prosecutrix has specifically submitted that she did not take pregnancy pills as accused was administering her those pills so that she could not become pregnant and he can sexually exploit her but prosecutrix deliberately avoided taking those pills and got pregnant eventually and she told this factum of stoppage of her menstrual-cycle to accused. in para-18 she has specifically stated that accused



left on 13.06.2022 and came back along with his family members. She has specifically deposed that accused and brother of accused was abused her with filthy words. She has specifically mentioned that brother, maternal-uncle and father of accused scolded and tortured her by stating that hat how a widow could marry and they all create ruckus and clash all night. When she told that she was pregnant thereafter they did not provide her food, water and medicine. She has further deposed on 13, 15, 20.06.2022 above family members came to her insulted her and abused her. She has specifically alleged that one tablet was given by maternal-uncle of accused namely Manoj had conducted her sonography test in which she was pregnant. It is further deposed that on 26.06.2022 her house was got vacated and owner of the house namely Bharti Devi gave her a receipt which is taken on record which is marked as Exhibit-7. She has further deposed that in the night of 26.06.2022 accused Manoj Kumar Mama of accused Abhay prepared food and mix something in the food which was chili chicken eaten by her in the night and in the morning 03:30 AM she started bleeding from her vagina. She has deposed that at about 05:00 AM she was crying but none of them to help. She further deposed that maternal-uncle of accused did not allow her to come outside the house. She further deposed that the foetus came out from her vagina and she was drenched in blood. She has further deposed that in a such horrible condition she was sent back from Sadar P.S. informing that since the matter is from



Gopal Ganj She further deposed that when she was going to SSP, Darbhanga then a telephone call came from Sadar Darbhanga that her blood stains and sample blood be taken for forensic test because she has been given medicine for miscarriage. She has further deposed that the said Manoj Kumar took her to DMCH, Darbhanga and she was compelled and harassed by police officials, Abhay Prasad and maternal-uncle accused that she must not tell by accused about abortion and she was forced to signed certain documents that she is not interested in any complaint. She has further deposed that her sonography report conducted by Ajay Prasad who is elder brother of accused. She has further deposed that one police official Rekha Kumari came to DMCH, Darbhanga and console her that don't worry you would get marriage. In the morning at 07:00 AM her blood test got conducted in private lab and after the discharge she was get to police station. In para-24 she deposed that on 18.02.2022 she was compelled to take some money and go back and on refusal she was subjected to torture. She has also deposed police official were talking with accused Pramila Devi and Pramila Devi telling them to organize fake marriage and abandon her on 28.06.2022 the family member of the accused and accused Abhay along with police official took her to Shyma Mai Mandir, Darbhanga but due to altercation between police official nothing could be done on that day. She has further deposed that on the next day she was taken to Ugna Mandir, Pandaul, Madhubani by accused Ajay Prasad and Pankaj Kumar



along with Abhay. Where marriage was solemnized and spatpadi was also conducted. She has brought on record all the papers of marriage and photographs are also marked as Exhibit-9, 10, 11, 12, 13, 14, 15 respectively. In para-25 she deposed that accused Abhay left her on 25.06.2022 on the pretext of going to Kolkata. Accused return from Kokata 04.07.2022 and also broke her mobile phone and thereafter she has alleged that she was forced to move an FIR against the accused her statement was also recorded before the magistrate which is marked as Exhibit-3. Her statement so recorded under Section 164 CrPC before the learned Magistrate is marked as Exhibit-2 in which she has stated that at the time of her marriage the brother of accused Ajay Prasad, Pankaj Yadav and Abhay was present. It is bright law that FIR is not the encyclopedia.

14. In her cross-examination, in para-60, the prosecutrix has stated that when family members of accused came then dispute had arisen and she was denied food and water. In para-61 of her cross-examination she has deposed that on 26.06.2022, Manoj Kumar (maternal-uncle) has given her something to eat due to which bleeding started.

15. In para-65 prosecutrix has deposed that the police had exerted pressure that accused was ready to marry with her and in that pressure she told that she don't want to lodge the police case in DMCH, Darbhanga. She has deposed that in para-89 that she was admitted in DMCH, Darbhanga and was discharged on next day. She has stated in para-70 that she



was taken to Shayama Mai Mandir for marriage on 28.06.2022 but the marriage could not take place due to altercation between police officials.

16. The prosecutrix has deposed in para-80 that family members exerted pressure on her along with police and false investigation has been done by the police.”

6. It would be further apposite to reproduce provision of Section 319 of the Cr.P.C., for better understanding of law.

“319. Power to proceed against other persons appearing to be guilty of offence.”-(1) *Where, in the course of any inquiry into, or trial of, an offence it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.*
(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.
(3) Any person attending the Court although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.
(4) Where the Court proceeds against any person under sub-section (1) then-
(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;



(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”

7. No doubt even if a person is not named in the charge sheet as an accused person, the trial court has adequate power to summon such a non named person as well.

8. It is also settled position of law that the satisfaction of the court summoning a person under Section 319 Cr.P.C. must be more than a *prima facie* case as found at the stage of charge framing and short of more satisfaction to an extent that evidence what surfaced, if unrebutted would lead to conviction.

9. The learned trial court referred different paragraphs out of testimony of opposite party no. 2 particularly para-18 of her deposition, who examined as PW-1 before the learned trial court, which appears sufficient to constitute *prima facie* the requirement to summon a person by exercising the power as available under Section 319 of the Cr.P.C.



10. Accordingly, this Court did not find any illegality committed by learned trial court through impugned order dated 24.06.2024 passed by learned 1st Addl. Sessions Judge, Darbhanga, in Sessions Trial No. 505/2023 arising out of Mahila P.S. Case No. 51/2022. Hence the present quashing petition stands dismissed, being devoid of any merit.

11. Let copy of this order be sent to the trial court, without delay.

(Chandra Shekhar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.02.2025
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