

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.85042 of 2019

Arising Out of PS. Case No.-180 Year-2010 Thana- BHABHU (KAIMUR) COMPLAIN C
District- Kaimur (Bhabua)

-
-
1. Amit Kumar Singh, Son of Jogindra Singh.
 2. Jogindra Singh @ Yogendra Bahadur Singh, Son of Late Bachcha Singh.
Both resident of Village - Barhauna, P.S.- Chainpur, District-
Kaimur. At present residing in Bhabua Ward No.3, South of Co-operative
Bank, P.S.-Bhabua, District-Kaimur.

... .. Petitioners

Versus

1. The State of Bihar.
2. Pratima Kumari, Daughter of Nandlal Tiwary, Resident of Village-Sonabo,
P.S-Chainpur, District-Kaimur. At present residing in Bhabua Chhawani Mo-
halla, P.S-Bhabua, District-Kaimur

... .. Opposite Parties

Appearance :

For the Petitioners	:	Mr. Pawan Kumar Singh, Advocate Mr. Abhash, Advocate Mr. Pradhan Murlimanohar Prasad, Advocate Mr. Raju Kumar, Advocate
For the State	:	Mr. Shyam Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT
Date : 03-04-2025

Heard learned counsel for the petitioners and
learned counsel for the State.

2. This application has been filed for quashing
the order dated 01.10.2019 passed by the learned Sessions
Judge, Kaimur at Bhabhua, in Criminal Revision No.47 of 2018,
by which, the learned Judge has allowed the revision application
filed by the opposite party no.2 and set aside the order dated



30.11.2017 passed by the learned Additional Chief Judicial Magistrate, Kaimur at Bhabhua, in Complaint Case No.180 of 2010, whereby and whereunder the learned Magistrate had rejected the petition filed by the opposite party no.2 for proceeding against the accused under sections 376/511 of the Indian Penal Code.

3. As per the complaint petition, the complainant (opposite party no.2) is the tenant of one Akloo Ram and the opposite party no.2 along with her sister, her brother and mother used to live in the rented house and at the time of incident she was studying in Class-IX. It is alleged that the opposite party no.2 was acquainted with the petitioner no.1, who was her co-villager. On 15.02.2010 at about 3.00 P.M. when her sister, brother and mother had gone out of the house, the petitioner no.1 entered into her room and tried to offer her a sum of Rs.500/- but when the opposite party no.2 refused to take the money, the petitioner no.1 tried to commit rape with her on gun point. In the meantime, her sister entered into the room and raised alarm whereupon the petitioner no.1 fled away. It is also alleged that on the next day i.e. on 16.02.2010, the mother of the opposite party no.2 called her husband from the village and narrated the entire incident. When the father of the opposite



party no.2 told this fact to the family of the petitioner no.1, the father of petitioner no.1 (petitioner no.2 herein) abused and slapped the father of the opposite party no.2 and also threatened him that if he will disclose this fact to the society, they will kill him. It is also alleged that the opposite party no.2 tried to lodge an FIR at Bhabua police station but the same was not registered and thereafter she filed the above complainant case before the learned Magistrate.

4. After the institution of aforesaid complaint case, the same was referred to the Magistrate for enquiry under section 202 of the Cr.P.C. On the basis of material available on record, the learned Magistrate took cognizance of the offence under section 504 of the Indian Penal Code.

5. It is the submission of the petitioners that before charge and after charge the opposite party no.2 has examined three witnesses and from perusal of the deposition of all the aforesaid three witnesses, it is evident that no offence under sections 376/511 of the Indian Penal Code is made out. Further, the charge was framed in this case on 08.10.2011 under section 354 of the Indian Penal Code and thereafter the case was fixed for evidence and subsequent thereof, five adjournments were granted to the opposite party no.2 but she did not appear



leading to closure of evidence.

6. It is the case of the petitioners that the opposite party no.2 filed a petition under section 311 of the Cr.P.C. for recall of evidence, which was rejected by the learned Magistrate on 28.01.2014. The said order was challenged by the opposite party no.2 before the learned Sessions Judge in Criminal Revision No.21 of 2014, which was allowed on 09.12.2014. Thereafter, the opposite party no.2 filed a petition in complaint case for adding charge under sections 376/511 of the Indian Penal Code which was rejected by the learned Magistrate vide order dated 27.04.2016. The aforesaid order was challenged by the opposite party no.2 in Criminal Revision No.90 of 2016. After hearing the parties, the learned Sessions Judge, allowed the said revision application and directed the court below to pass a fresh order in accordance with law. Thereafter, a petition was filed on 29.09.2016 for altering the charge from section 354 of the Indian Penal Code to section 376/511 of the Indian Penal Code and prayer was also made for cross-examining prosecution witness Shila Devi. The learned Magistrate vide order dated 30.11.2017 rejected the said petition. Against the order of the Magistrate, the opposite party no.2 filed Criminal Revision No.47 of 2018 before the learned



Sessions Judge, Kaimur at Bhabhua. The aforesaid Criminal Revision No. 47 of 2018 filed by the opposite party no.2 was dismissed for default on 08.06.18 due to non-compliance of order regarding removal of defect but subsequently the same was restored by the learned Sessions Judge, Kaimur at Bhabhua vide order dated 30.04.2019 preferred by the opposite party no.2. Thereafter, the learned Sessions Judge, Kaimur at Bhabhua heard the Criminal Revision No.47 of 2018 on merits and allowed the same vide impugned order dated 01.10.2019 and set-aside the order dated 30.11.2017 passed by the learned Magistrate.

7. It is the submission of the petitioners that the impugned order dated 01.10.2019 passed in Criminal Revision No.47 of 2018 allowing the revision application filed by the opposite party no.2 is quite illegal, improper and without jurisdiction as the learned Revisional Court while exercising jurisdiction under section 397 of the Cr.P.C. cannot direct the trial court to pass the order after re-assessment of the evidence. It can only interfere in the order of inferior court for the purpose of satisfying itself as to the legality and regularity of any proceeding.

8. I have perused the impugned order passed by



the revisional court by which the revision application filed by the opposite party no.2 has been allowed. The revisional court, after appreciating the evidence on record has set aside the order of the Magistrate by which the learned Magistrate has rejected the petition filed by the opposite party no.2 for proceeding against the accused under sections 376/511 of the Indian Penal Code. I do not find any illegality in the impugned order as the allegations levelled in the complaint case make out a case under sections 376/511 of the Indian Penal Code as has been held in the order of the revisional court.

9. Accordingly, this application is dismissed. The court below is directed to proceed in the matter and dispose of the same expeditiously.

(Sandeep Kumar, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	09.04.2025
Transmission Date	09.04.2025

