

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1283 of 2024

Arising Out of PS. Case No.-28 Year-2023 Thana- SC/ST District- Kaimur (Bhabua)

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1. Nathuni Sharma S/o Late Amika Sharma R/o Village- Harla, P.S- Sonhan, Distt.- Kaimur At Bhabua.
 2. Chhedi Sharma S/o Hari Sharma R/o Village- Harla, P.S- Sonhan, Distt.- Kaimur At Bhabua.

... .. Appellant/s

Versus

1. The State of Bihar
2. Laxmina Devi W/o Shivdas Ram R/o Village- Harla, P.S- Sonhan, Distt.- Kaimur At Bhabua.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Tribhuwan Narayan, Advocate Mr. Anurag Patel, Advocate
For the Informant	:	Mr. Ravi Shankar Sahay, Advocate Mr. Hiralal Gupta, Advocate Mr. Rakesh Kumar Mishra, Advocate
For the Stat	:	Ms. Usha Kumari 1, Sp.PP

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

10 23-03-2026 Heard learned counsel for the appellants, learned counsel for the Informant and learned Special Public Prosecutor for the State.

2. The appellants have filed the present application for challenging the order of cognizance dated 31.01.2024, passed by the learned Additional Session Judge-1 cum Special Judge, SC/ST (POA) Act, Kaimur in Bhabua SC/ST P.S. Case No. 28 of 2023. Whereby differing with the police report, the learned Special Court has taken cognizance against the appellants under Sections 452, 376(D), 380, 506 IPC and 3(ii)(v) SC/ST (POA) Act.

3. The prosecution story, in brief, is that on



07.07.2023, the informant, Laxmina Devi, wife of Shivdas Ram, lodged the present FIR, bearing Bhabhua SC/ST P.S. Case No. 28 of 2023 against the appellants, alleging that on the same day at about 01:00 PM, appellant no. 1, Nathuni Sharma, entered into her house and forcibly committed rape. It is further alleged that subsequently appellant no. 2, Chhedi Sharma, came at her door and appellant no. 1 opened the door thereafter appellant no. 2 also entered into her house and committed rape. The informant has further alleged that she works in JIWKA and had kept certain documents and Rs. 20,000/- in her house, which was also taken away by both the appellants.

4. Learned counsel for the appellants submits that the FIR was lodged at about 08:00 PM on the same date, and the victim, aged about 40 years, was examined by the doctor on the same day at 08:45 PM. The doctor, after conducting the medical examination, including external examination, observed that the hymen membrane was old ruptured and healed; no internal injury was detected. Upon pathological examination of vaginal and vulval swabs, spermatozoa were not found. The doctor opined that, based



on these findings, sexual assault could not be ascertained. Accordingly, the submission is that the medical examination of the victim does not support the prosecution story, as she was examined within 24 hours of the alleged incident and no signs of rape was detected. Further, the police, after investigation, found the case to be false and submitted a final form, exonerating the appellants from the charges and they were not sent for trial.

5. Learned counsel further submits that, according to the supervision note, the police found that the present case lodged against the appellants was in retaliation of a case filed by the minor daughter of the appellants, who was kidnapped and raped by one Babloo Pathak of the same village, where the husband of the informant was working as a labourer. The supervision note records, based on the version of co-villagers, that on the date of occurrence, i.e., 07.07.2023, in the morning, the informant, who runs a JIWKA group, obtained the signature of the appellant's daughter on four plain papers on the pretext that she would arrange a job for her in the JIWKA group with a monthly payment of Rs. 10,000/-. The appellant's daughter signed



the papers and later informed her father, appellant no. 1, about the matter. Appellant no. 1 went to the informant's house but did not find her there. The villagers informed him that she had gone to the house of Babloo Pathak, the accused in the FIR lodged by the appellant's daughter bearing Mahila P.S. Case No. 15 of 2023 dated 08.04.2023 under Sections 376 and 366A/34, in which Babloo Pathak was arrested and sent to jail. Thereafter, appellant no. 1 went to the house of Babloo Pathak and saw the informant coming out of his residence. Appellant no. 1 demanded the papers signed by his daughter from the informant, but the same were not returned. Appellant no. 1, along with his daughter, then went to the police station to lodge a complaint, and upon learning of this, the informant allegedly lodged a false FIR under Section 376 read with the SC/ST Act.

6. Learned counsel for the appellants, thus referring to the police report and the supervision note, submits that the informant was a tool in the hands of Babloo Pathak, and at his instance, she lodged a false, fabricated, and concocted story, which is not supported by any



evidence, including the medical evidence, except the statements of her husband, daughter-in-law, and son, which themselves are hearsay. The alleged offence is said to have been committed in broad daylight at about 01:00 PM, but, except for the aforesaid three witnesses, who are close family members of the informant, no other villagers have made any statement against the appellants. The FIR has been lodged in abuse of the process of law and at the behest of Babloo Pathak, who intended to put pressure on the appellants to enter into a compromise in the case lodged by their minor daughter.

7. On the other hand, learned counsel for the informant submits that the prosecution story has been supported by three witnesses who are the husband, daughter-in-law and son of the victim. At the time of the alleged occurrence, they were not at home and when they returned, the informant narrated the entire incident, which was subsequently recorded in their statements during investigation. He further submits that although the doctor did not give any clear cut finding regarding the occurrence of rape, the external examination suggested that the victim



may have cleaned her private parts after the incident. Learned counsel also submits that the victim, in her statement recorded under Section 164 Cr.P.C., has supported the prosecution story and the supervision note of the DSP is a table report and he did not personally visit the place of occurrence and also not recorded the statements of any witnesses during course of investigation before arriving at the finding that the case in question is frivolous and not true.

8. I have heard learned counsel for the parties and have gone through the materials on record, including the impugned order and investigation report.

9. The FIR was lodged on 07.07.2023 in the evening, at about 01:00 PM on the same day. The victim was medically examined immediately after lodging of the FIR, at approximately 08:45 PM. The internal examination revealed that the hymen membrane was old ruptured, and healed. The doctor, based on the external and internal medical examination, opined that sexual assault could not be ascertained. Further, no spermatozoa, dead or alive, were detected upon vaginal and vulval swabs.



10. The supervision note, approved by the SP, narrates that co-villager Babloo Pathak, who was the accused in the FIR lodged by the minor daughter of appellant no. 1 under Sections 376 and 366A and went to jail, was trying to get the matter compromise and upon refusal by the appellant, the present FIR has been lodged through the informant in order to put pressure. The attending circumstances and the totality of facts, including the medical evidence, does not support the prosecution story.

11. The Hon'ble Supreme Court, in *(2023) 20 SCC 219, Mohd. Wajid & Anr. v. State of U.P., and (2023) 20 SCC 194, Salib @ Shalu @ Salim*, has observed that when an accused seeks quashing of either the FIR or criminal proceedings on the ground that such proceedings are manifestly frivolous, vexatious or malicious, the Court is duty bound to examine the matter with greater care. It will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In



frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation.

12. The Hon'ble Supreme Court further observed that once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc. then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence.

13. In the backdrop of the aforesaid facts, the legal



principles laid down by the Hon'ble Supreme Court, and the overall circumstances leading to the lodging of the present FIR, as per the materials collected during the course of investigation including the attending circumstances and the fact that the informant's husband was working as a labourer with one Babloo Pathak, who was the accused in an FIR lodged by the minor daughter of appellant no. 1 under Sections 376/366A/34—this Court is of the considered opinion that the criminal prosecution of FIR initiated against the appellants are manifestly frivolous and vexatious. Allowing the prosecution to proceed in the facts of the present case would amount to a miscarriage of justice and an abuse of the process of the Court. Learned Special Court has taken cognizance without appreciating the materials on record and in a mechanical manner. Accordingly, the order taking cognizance and summoning the accused/appellants, passed by the Additional Sessions Judge-1 cum Special Judge SC/ST (POA) Act, Kaimur, in Bhabua SC/ST P.S. Case No. 28 of 2023, is hereby quashed and set aside.

14. Accordingly, the entire prosecution against



the appellants is also quashed.

15. This appeal is, accordingly, allowed.

(Anil Kumar Sinha, J)

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