

Rajendra Rai, Vs. the State of Bihar

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Court : Patna

Decided On : Apr-03-2006

Judge : Rekha Kumari, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482; Indian Penal Code (IPC) - Sections 379 and 498A

Appeal No. : Criminal Misc. No. 25445 of 2005

Appellant : Rajendra Rai, Yogendra Rai, Binoy Kumar Rai and Sanjay Rai

Respondent : The State of Bihar

Disposition : Application dismissed

Judgement :

Rekha Kumari, J.

1. Heard.

2. This is an application filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code) for quashing the order dated 6.6.2005 passed by Sri Sanjay Kumar Sinha, J.M. 1st Class, Vaishali at Hajipur in G.R. Case No. 1496 of 2004/Tr. No. 1881 of 2005 by which cognizance has been taken by the learned Magistrate against the petitioners.

3. This case arises out of a complaint petition filed by one Jai Mangal Singh in which he has alleged that the petitioners had come to his house and took his daughter to her matrimonial home on the pretext that her husband who used to work in Punjab had returned and was seriously ill. After two days, out of anxiety, the complainant also went to see his son-in-law. He found that neither his son-in-law nor his daughter was present in the house. Later on he learnt from the news item that the miscreants had committed rape on his daughter at Salha Chowk. He accordingly filed a complaint case and the learned Chief Judicial Magistrate sent the same to the police for institution of a case and for investigation. Ultimately, chargesheet was submitted and the cognizance was taken.

4. Learned Counsel for the petitioners submitted that the prosecution story is false. Victim Usha Devi herself filed a complaint petition (Annexure-2) against Jai Prakash Rai and Ram Prasad Rai alleging therein that they had abducted her, made her un-conscious and then committed rape on her. He also referred to annexure-4 a petition filed by the said victim Usha Devi before the Chief Judicial Magistrate, Vaishali Hajipur stating that the petitioners had not done any wrong to her. Learned Counsel, therefore, contended that in view of that above facts, no offence is made out against them and continuance of the case would be an abuse of the process of the court and the order taking cognizance is fit to be quashed.

5. Learned A.P.P. appearing for the State opposed the prayer and submitted that vide Annexures 2 and 3, the petitioners have placed their defence which cannot be considered at this stage. At the time of cognizance, the Magistrate has only to satisfy himself as to whether from the facts appearing in the F.I.R. constitute a prima facie case against the petitioners and whether there is material in support of those facts. The police has also investigated the case and found the case true and submitted chargesheet. Hence, there is no illegality or infirmity in the impugned order.

6. It appears from the F.I.R. which is based on the complaint petition of the father of the victim that the petitioners had abducted the victim and then she was raped. Police has also found, during investigation, sufficient materials against the petitioners under Sections 498-A and 379 I.P.C. and submitted chargesheet. It is

also well settled that at the time of taking cognizance, the defence of the accused or defence documents cannot be considered.

7. Therefore, when the learned Magistrate found prima facie case against the petitioners on the basis of the chargesheet and case diary and passed the impugned order. I do not find any reason to interfere with it.

8. This application is accordingly dismissed.

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