

Bibi Islaman, and anr. Vs. State of Bihar.

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Court : Patna

Decided On : Aug-25-2010

Judge : Rakesh Kumar, J.

Acts : Code of Criminal Procedure (CrPC) - Section 482; Indian Penal Code (IPC) - Sections 366A, 376, 109, 363, 365

Appeal No. : CRIMINAL MISCELLANEOUS No.30431 OF 2000

Appellant : Bibi Islaman, and anr.

Respondent : State of Bihar.

Advocate for Def. : Mr. Hirday Prasad Singh, Adv.

Advocate for Pet/Ap. : Mr.Ajay Kumar Thakur; Mr.Imteyaz Ahmad, Advs.

Judgement :

1. Five petitioners, while invoking inherent jurisdiction of this court under section 482 of the Code of Criminal Procedure, have prayed for quashing of an order dated 6.9.2000 passed by the Additional Chief Judicial Magistrate, Benipur in Bahera P.S. Case No.89 of 2000. By the said order the learned Magistrate has taken cognizance of the offences under sections 366A and 376/109 of the Indian Penal Code against all the accused persons differing with the police report.

2. Short fact of the case is that a case was instituted against the petitioners and one another for the offences under sections 363, 365 and 366A of the Indian

Penal Code which was registered as Benipur Bahera P.S. Case No.89 of 2000. During the course of investigation the victim was recovered and subsequently charge sheet was submitted against only one accused namely Md. Chhedi. After submission of charge sheet, the learned Magistrate examined the materials available in the case diary and discussing each and every material differed with the police report and took cognizance of the offences even against the petitioners, who were not forwarded by the police.

3. After arguing the case at length Mr.Imteyaz Ahmad, learned counsel appearing for the petitioners, prayed that he may be allowed to withdraw the present petition so that the petitioners may raise all the points at the time of charge in the court below.

4. Mr.Hirday Prasad Singh, learned Addl. Public Prosecutor appearing on behalf of the State, has vehemently opposed the prayer of the petitioners. He submits that during investigation sufficient materials were brought on record showing involvement of all the accused persons.

5. This court is not inclined to accept the prayer of the learned counsel for the petitioners keeping in view the fact that the offence was serious in nature and the matter remained pending before this court for a long period. This court on 6.12.2001, while admitting the case, directed that during pendency of this application further proceeding in the court below with regard to the petitioners shall remain stayed and, as such, the matter remained pending for such a long period.

6. I have perused the impugned order i.e. the order dated 6.9.2000 passed by the learned Magistrate. The order passed by the learned Magistrate is perfectly correct and legal. The learned Magistrate assigned sound reason for differing with the police report. I do not find any defect in the impugned order. Accordingly, the petition stands rejected.

7. Keeping in view the fact that it was a case of kidnapping and rape, it is desirable to direct the court below to proceed with the case expeditiously so that the case may come to its logical end as early as possible.

8. With the above observation and direction the petition stands rejected.
9. In view of rejection of this petition, interim order of stay granted by this court on 6.12.2001 stands automatically vacated.
10. Let a copy of this order be sent to the court below forthwith.

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