

(2018) 12 PAT CK 0023

In the Patna High Court

Case No : Criminal Miscellaneous No. 34160 of 2011

Rabindra Prasad Sah, S/O Late Gajadhar Prasad Sah

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 07-12-2018

Acts Referred:

Code of Criminal Procedure Code, 1973 — Section 482
Indian Penal Code, 1860 — Section 376, 511

Citation : (2018) 12 PAT CK 0023

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Ranjeet Kumar Pandey, Nagendra Dubey, Jharkhandi Upadhyay

Final Decision : Allowed

Judgement

Ahsanuddin Amanullah, J.

1. Heard learned counsel for the petitioner; learned A.P.P. for the State and learned counsel for the Opposite Party No. 2.

2. The petitioner has filed the present application under Section 482 of the Code of Criminal Procedure Code, 1973 for the following relief:

"That instant application is being filed for setting aside the order dated 09.02.2010 passed in complaint case no. 1150 (C) /2009 by Shri Brajesh Kumar, Learned J. M. 1st Class, Jamui whereby and where under the learned Magistrate found prima facie case made out u/s 376/511 IPC against all accused persons named in the complaint petition and directed the office to issue summon against the accused persons including the petitioner."

3. As has been alleged in the complaint, the Opposite Party No. 2 (Complainant) had applied for a loan of Rs. 25,000/-from the Bihar Kshetriya Gramin Bank (hereinafter referred to as the 'Bank') at Jamui and the petitioner was the Regional Manager of the Bank posted at Lakhisarai, whereas the other accused

was the Branch Manager of the Jamui Branch. It is alleged that the co-accused had taken signature of the Opposite Party No. 2, on various blank papers, assuring that a loan of Rs. 25,000/- would be granted to her. It was further alleged that on 06.09.2009, the complainant was called by the co-accused to his residence at 7.00 P.M. and when she went there, the petitioner was also present and after locking the door, on gun point, both committed rape with her and then assured that the loan would be sanctioned and also asked her to keep quite.

4. Learned counsel for the petitioner submitted that the complaint petition is vexatious as well as frivolous. It was submitted that the same was only with a view to pressurize the Bank to sanction the loan and further, it is also by persons who act as agents for getting the loan sanctioned, who wanted to take undue advantage of the position of the petitioner for loan to be sanctioned even in cases which could not be approved. Learned counsel submitted that the complaint was pre-planned, which would be obvious from the fact that at internal page-3 of the complaint petition, the date of filing of the complaint is referred to as 05.09.2009, though the same has been done on 07.09.2009 and the date of the alleged incident is 06.09.2009. It was submitted that the same clearly exposes the fact that the complaint was already prepared and ready on 05.09.2009 itself, i.e., a day prior to the incident. It was further submitted that the witnesses, who have deposed are only hearsay witnesses as in the reply to the query of the Court, they had stated that their information to the Court was on the basis of what was told to them by the Opposite Party No. 2. Learned counsel submitted that the power to sanction loan upto Rs. 2,00,000/- is that of the Branch Manager, in which the petitioner being the Regional Manager at the relevant point of time had absolutely no role, as the power to him was to sanction loan between Rs. 5,00,000/- to 35,00,000/-. Learned counsel drew the attention of the Court to the fact that the Opposite Party No. 2 is in the habit of filing such complaint by referring to Annexure-2, which is copy of the Complaint Case No. 744 C of 2010 filed by the petitioner against another person in which also there is allegation of rape. Learned counsel submitted that there is contradiction in the complaint and the S.A. of the complainant, inasmuch as, in the complaint she has stated that the co-accused had called her to his residence which was situated next to the line hotel, whereas in her S.A. before the Court, she has said that he had called her on the 2nd floor of the line hotel, which are materially different and completely contradictory to each other. Learned counsel submitted that in the background of the aforesaid as also the fact that there has been no medical examination or report to substantiate the allegation as also the fact that the petitioner cannot be expected to have a gun in his hand requiring him to commit the offence for the reason that if the Opposite Party No. 2 was desirous for a loan, the petitioner and the co-accused could easily have cohabited her without having to use any force much less committing the offence at gun point. Learned counsel further submitted that the petitioner being an outsider could not have committed the offence in the place where the Opposite Party No. 2 resides, as being a local, she would obviously have informed others and the

petitioner stood the risk of being lynched or otherwise manhandled by the local population. It was submitted that the petitioner has clean and unblemished track record. Learned counsel submitted that the most vital aspect of the matter which would clinch the issue in favour of the petitioner is the fact that in the complaint, the Opposite Party No. 2 has stated that she had been called and went alone to the house of the co-accused, whereas in her reply to the Court query during her S.A., she has stated that she had gone to the house of the co-accused with her Devar. Learned counsel submitted that once she accepts that she had gone to the house with her Devar, there cannot be any question of forcible commission of rape on her by the petitioner and the co-accused.

5. Learned A.P.P. and learned counsel for the Opposite Party No. 2 submitted that the Court below had rightly relied upon the complaint and deposition of the witnesses and taken cognizance and the petitioner has an opportunity to present his defence at the time of framing of charge.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that a case for interference has been made out. The contention of learned counsel for the petitioner, as recorded above, clearly indicates that the Opposite Party No. 2 was in the habit of filing such cases and most importantly, there are serious discrepancies with regard to the fact that in the complaint, she has stated that she was called by the co-accused and she went there alone, whereas in her evidence before the Court, to a Court query, she has stated that she had gone with her Devar. Once she admits before the Court in her evidence that she had gone with her Devar to the place of the co-accused where there is allegation of rape having been committed, coupled with the fact that there being no explanation as to what the Devar was doing when the door was locked and she was subjected to rape, the Court finds that such allegation in the background of the position of the petitioner at the relevant time and the sequence of events, as narrated in the complaint case, are totally unbelievable and unreliable. Further, the place of occurrence, as stated in the complaint petition and in the statement before the Court are also different.

7. For the reasons aforesaid, the application stands allowed. The order dated 09.02.2010 passed in Complaint Case No. 1150 (C) of 2009 by Shri Brijesh Kumar, learned Judicial Magistrate, 1st Class, Jamui by which he has taken cognizance under Sections 376/511 of the Indian Penal Code against the petitioner, stands quashed.

8. The lower Court records be returned forthwith.