

(2014) 07 PAT CK 0021

In the Patna High Court

Case No : Criminal Miscellaneous No. 30489 of 2009

Ram Binod Yadav

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 11-07-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 228
Penal Code, 1860 (IPC) — Section 354, 376, 511

Citation : (2014) 07 PAT CK 0021

Hon'ble Judges : Ashutosh Kumar, J

Bench : Single Bench

Advocate : Sajjid Salim Khan and Ram Sumirain Rai, Advocate for the Appellant; Shivendra Kumar Sinha and Jharkhandi Upadhayay, Advocate for the Respondent

Judgement

Ashutosh Kumar, J.—Heard Mr. Sajjid Salim Khan, learned counsel for the petitioner, Mr. Shivendra Kumar Sinha learned counsel for the Opposite Party No. 2 as well as Mr. Jharkhandi Upadhayay, for the State.

2. The petitioner has preferred an application under Section 228 of the Code of Criminal Procedure before the Court below seeking remittance of the case back to the learned Chief Judicial Magistrate for trial as from the documents and the materials available on record, he could not have been charged for the offence under Sections 376/ 511 (Sessions Trial 319 of 2009) but only under Section 354 of the Indian Penal Code. The Court below rejected such prayer.

3. The order refusing to his this application under Section 228 of the Cr.P.C. by the petitioner is under challenge.

4. The allegation in the First Information Report is that the petitioner alongwith another person scaled over the wall and entered into the Courtyard of the Opposite Party No. 2. This was done in the dead of the night on a rainy day and, as alleged, overt acts were committed by the petitioner and his associate which

amounted to an attempt for committing rape with the Opposite Party No. 2. Pursuant to such FIR, investigation proceeded whereafter charge sheet was submitted and cognizance was taken under Sections 376/ 511 of the Indian Penal Code.

5. It appears that the petitioner preferred an application under Section 227 of the Cr.P.C. for discharge which was rejected. Thereafter, an application under Section 228 of the Cr. P.C., as stated above, was filed which also was rejected.

6. Learned counsel for the petitioner submits that taking the allegation against him on its face value and in its entirety, it would only make out a case under Section 354 of the Indian Penal Code. In support of his contention, he states that whatever is the ingredients necessary for bringing home the charges under Section 354 has been alleged by the Opposite Party No. 2. The Opposite Party No. 2, was assaulted and the petitioner and another are said to have clung over on her body. It is further submitted by the learned counsel for the petitioner that there was no occasion for the petitioner to have committed that act. In fact, it is a case which has been cooked up for the purposes of bringing bad name to the petitioner so that he may not pursue his political career further. Learned counsel for the petitioner also points out certain paragraphs of the case diary wherein the statements of the witnesses make it very obvious that the case has been cooked up. He has raised issue at the fact that without any authority, the local functionary, in the counter affidavit filed in this case, has given a certificate that the petitioner is a person of questionable antecedents. Taking the entire prosecution version on its face value and being accepted as truthful statement, only Section 354 of the Indian Penal Code can be said to have been made out.

7. Per contra, Shri Shivendra Kumar Sinha, learned counsel for the Opposite Party No. 2, states that the intention to commit rape is very evident from the facts of the case. If it were not for the intention of committing rape, the petitioner would not have come in the Courtyard of the Opposite Party No. 2 in the dead of the night alongwith his associate. He says that it was only fortuitous escape for the opposite Party No. 2 when, on her cries for relief, persons of the family arrived when the accused persons took to their heels.

8. On carefully examining rival contentions of the parties, it is very clear that an offence under Section 376/ 511 Indian Penal Code is made out, as against the petitioner. The order refusing to remit the case back to the Court of Chief Judicial Magistrate for trying the petitioner for the offence under Section 354 of the Indian Penal Code is justified and no interference is required at this stage.

9. However, the petitioner would be at liberty to raise such grounds in his favour during the course of trial at the appropriate stage and under proper forum.

10. Thus, the application is dismissed.