

(2008) 04 PAT CK 0013

In the Patna High Court

Case No : Criminal Miscellaneous No. 27156 of 2006

Sunil Pandey and Others

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 11-04-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 323, 34, 341, 376, 504

Citation : (2008) 3 PLJR 404

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Advocate : S.N.P. Sinha and Sanjeev Kumar Jha, for the Appellant; Jharkhandi Upadhayay for the State and Mr. Vijay Kumar Sinha No. 1 for O.P. No. 2, for the Respondent

Final Decision : Allowed

Judgement

Abhijit Sinha, J.—The petitioners who are the F.I.R. named accused of Ram Nagar P.S. Case No. 116 of 2004 have prayed for the quashing of order dated 18.5.2006 passed therein by the learned Additional Chief Judicial Magistrate, Bagaha (West Champaran) whereby having differed from the police report he has directed for issuance of process against the petitioners for offence under Sections 341, 323, 376 and 504 I.P.C. It appears that one Gayanti Devi, impleaded as O.P. No. 2 herein, gave her fardbeyan at 6.15 A.M. on 24.8.2004 inter alia alleging that at about 4.00 A.M. while she alongwith her daughters, Rita Devi and Sunder Pati Devi, was going to attend the call of nature, co-villagers Sunil Pandey, Chhotey Pandey and Sandeep Pandey came and caught hold of them and whereas the daughters managed to escape from their clutches and were followed by Sandeep Pandey, she herself was allegedly raped by" Sunil Pandey and Chhotey Pandey taking turns. It is said that after the occurrence she went home weeping and narrated the incident to her husband and in the meantime Sandeep Pandey, Raj Keshwar Pandey, Baliram Pandey, Rajeshwar Pandey, wife of Sita Ram Pandey and wife of Raj Keshwar Pandey, came over hurling abuses and

resorted to assault with fists and slaps as a result whereof her two daughters and husband Mahesh Pandit sustained injuries. It has been alleged that 5-6 days prior thereto the accused persons had thrown brickbats at their house and also resorted to torturing them in various ways.

2. It further appears that although the case was registered under Sections 341, 323, 504 and 376 I.P.C, the police after due investigation submitted a chargesheet only under Sections 341, 323, 504/ 34 I.P.C. However, the learned Magistrate differing from the police report took cognizance of offences under Sections 341, 323, 504 and 376 I.P.C.

3. It has been submitted on behalf of the petitioners that the learned Magistrate had not applied his mind to the fact that the so-called victim had filed an application dated 2.11.2004 before the learned Additional Chief Judicial Magistrate stating therein that she had not lodged any case of rape against any accused persons and rather the fact was that at the time of planting of paddy seedlings, as per prevailing custom, there were throwing of mud between the cultivators and labourers causing some injuries to O.P. No. 2. and that there had been some exchange of abuses and that taking advantage of the occasion some people with vested interests had brought her and her husband to the Police Station where her thumb impression on a blank-sheet of paper was taken whereafter she was taken to Bettiah for treatment and on the aforesaid premise she requested the learned Magistrate to record her statement.

4. It has also been submitted that in course of investigation the police recorded the further statement of the victim in paragraph 77 and the statement of her husband and daughter at paragraphs 78 and 79 of the case diary and all of them had stated that some persons with vested interests after duping them had got the false case of rape instituted. It was further submitted that even the higher police officials supervising the case had opined that the allegation of rape was false and directions had been issued for submitting chargesheet only under Sections 341, 323 and 504/34 I.P.C. The learned counsel also sought to point out that the doctor who had examined the victim had not found any sign of sexual intercourse. It was also sought to be pointed out that the victim is a mother of six children of whom two daughters had attained majority. A grievance was also raised of the learned Magistrate not having given a speaking order for having differed with the police report.

5. On the aforesaid premise, it was sought to be submitted that no offence u/s 376 I.P.C. from the materials available in the case diary can be said to have been made out against the petitioners.

6. It is by now well settled by a catena of decisions that statement u/s 164 Cr.P.C. cannot be recorded unless it is at the instance of the Investigating Officer, and, therefore, the learned Magistrate not having passed any order on the petition filed by the victim was not an issue which could be agitated at this stage as there was no illegality therein.

7. However, from the materials available in the case diary specially in the further statement of the victim and the statement of her husband and daughter, it would appear that no case of rape appears to have been made out against any of the petitioners. That apart the learned Magistrate has neither assigned any reason nor given the materials available in the case records that made him differ from the charge-sheet submitted.

8. Due regard being had to the facts and the circumstances of the case, the impugned order taking cognizance is modified to the extent that Section 376 I.P.C. shall be deleted therefrom and the case will proceed under Sections 341, 323, 504 I.P.C, against the petitioners. Accordingly, the impugned order is modified and the application is allowed in part to the extent mentioned above.