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IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.1046 of 2009

With

Interlocutory Application No.1337 of 2009

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Durgawati Devi, wife of Sri Rup Nath Chaubey, resident of village Lauwari, P.S.Rasulpur, District Saran, Chapra

.... Petitioner/s

Versus

1. The State of Bihar
2. Rameshwar Das Tyagi, son of Bhoj Prasad, resident of village Gangapur siswan, P.S. Siwan, District Siwan, at present Old Ram Janki Mandir, Chainpur, P.S. + O. P. Chainpur (Siswan) District Siwan
3. Jawahar Mallah, son of late Ramsurat Mallah, resident of village Chainpur, P.S. + .O. P. Chainpur (Siswan), District Siwan
4. Shivjee Tiwary, son of Shri Pashupti Tiwary, resident of village Chainpur, P.S. + O.P. Chainpur (Siswan), District Siwan

.... Oppositer party/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Chaudhary, Advocate
Mr. Anil Kumar Tiwary, Advocate

For the State of Bihar : Mr. Uma Nath Mishra, Addl.P.P.

For the Opp. Party nos. 2 to 4 : Mr. Udit Narain Singh, Advocate
Mrs. Vandana Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL ORDER

5 30-11-2012 **Re. Interlocutory Application No. 1337 of 2009**

After having heard the parties and for the reasons disclosed in this interlocutory application seeking condonation of delay, the delay occurred in filing the main criminal revision application is hereby condoned.

Interlocutory application stands disposed of.

Re. Cr. Revision No. 1046 of 2009

Heard the parties.

The petitioner-complainant, being aggrieved by the order dated 1.12.2008 passed in Complaint Case No. 1265 of 2008 by the learned Judicial Magistrate, Siwan, dismissing the aforesaid complaint case filed on behalf of the petitioner in exercise of his powers under Section 203 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C')., has approached this Court under Sections 397 and 401 of the Cr.P.C., questioning the correctness, validity and propriety of the impugned order.

Learned counsel appearing on behalf of the petitioner submits that the learned Judicial Magistrate while passing the impugned order has exceeded his jurisdiction by taking into consideration the prospective defence of the accused persons in the aforesaid complaint case and, therefore, according to him, the impugned order is liable to be set aside by this Court. It is also contended that statements of the witnesses recorded under Section 202 Cr.P.C. have not been taken into consideration by the learned Magistrate for the purpose of finding out a prima facie case and for issuance of process against the accused persons under Section 204 Cr.P.C. In support of his above contentions, he has placed reliance on a judgment of the Hon'ble Apex Court in the matter of

Santosh Moolya and Anr. Vs. State of Karnataka [(2010) 5 SCC 445] as also the judgments of this Court in the case of **Md. Faiyaz Alam Vs. The State of Bihar & Ors [2008(3) P.L.J.R. 611]** and **Tarkeshwar Singh Vs. The State of Bihar & Anr. [2007(1) P.L.J.R. 676]**

Learned counsel appearing on behalf of the opposite party nos. 2 to 4 has strongly opposed the prayer made on behalf of the petitioner and has supported the impugned order passed by the learned Judicial Magistrate dismissing the complaint petition filed on behalf of the petitioner. According to the learned counsel for the accused opposite parties, on plain perusal of the complaint petition no case of rape, as alleged, is made out against the accused opposite party no.2, and at best it appears to be a case of consent between the petitioner and accused opposite party no.2. Other allegations against the accused persons become doubtful due to belated filing of complaint petition by the petitioner. In support of his above contentions, he has placed reliance on the judgments of the Hon'ble Apex Court in the case of **Deelip Singh @ Dilip Kumar Vs. State of Bihar [(2005) 1 SCC 88]** and **Jayanti Rani Pando Vs.State of West Bengal and Anr. [1984(2) CRI.L.J. 1535]**

After having heard the parties, this Court finds that the

entire matter requires reconsideration by the learned Magistrate. It is true that the petitioner originally filed a complaint petition on 31.5.2007. In the petition of complaint, the petitioner admitted that she started living in the temple from May, 2005 at the behest of the accused persons, where she was working as a maid servant and accused opposite party no.2 is said to be Mahanth of that temple. However, in the aforesaid petition of complaint, the petitioner has alleged commission of rape on 3.5.2007 and even thereafter on the assurance given by the opposite party no.2 to marry her. In the petition of complaint, the petitioner has made an allegation of assault on 30.5.2007 against all the accused persons. However, the learned Magistrate while passing the impugned order has not at all considered and discussed the statements/evidence of the witnesses produced on behalf of the petitioner during the course of enquiry in terms of Section 202 Cr.P.C. Not only that, the learned Magistrate has committed an error of record that alleged occurrence of rape had taken place more than a year earlier and yet no case was filed by the petitioner. The learned Magistrate has further committed an error of record that the occurrence of assault had also taken place about one year two months earlier and on these findings he has come to a conclusion that the case filed by the complainant-petitioner was not believable and, therefore, in

exercise of his powers under Section 203 Cr.P.C. he has dismissed the petition of complaint.

Apparently, the aforesaid findings recorded by the learned Magistrate are contrary to the materials available on the record and contrary to the claim made in the original petition of complaint vide Annexure-1 filed on behalf of the petitioner. It is apparent that the learned Magistrate has not correctly and properly assessed the materials available on record either for issuance of process in terms of Section 204 Cr.P.C. against the accused persons or for the purpose of dismissing the petition of complaint in exercise of his powers under Section 203 Cr.P.C.

In the result, the impugned order dated 1.12.2008 passed by the learned Judicial Magistrate, Siwan, in Complaint Case No. 1265 of 2008 is hereby set aside and the matter is remanded back to the learned Judicial Magistrate, Siwan, for reconsideration of the entire matter and for passing a fresh order strictly in accordance with law.

Since the matter is pending since long, it is expected that fresh order shall be passed by the learned Magistrate within a maximum period of three months from the date of receipt/production of a copy of this order. It is also clarified that at that stage the accused persons are not required to be heard and the

learned Magistrate shall pass fresh order on the basis of materials available on the record strictly in accordance with law.

The application stands finally disposed of.

(Birendra Prasad Verma, J)

Kanth/-

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