

In the Court of Addl. Sessions Judge- III
Vaishali at Hajipur

S. Tr. No. 76/2020

16.08.2021

This order will dispose off the petition U/s 227 Cr.P.C. dated 17-12-2020 on behalf of accused-petitioners Md. Taiyab, Md. Firoj and Md. Nemat praying to discharge them. Ld. APP filed the reply dated 08-02-2021 to the petition of the defence.

As per allegations in brief, the informant has alleged that on 19.03.2016 accused Md. Mustafa induced her for marriage and he took her to Hyderabad, Punjab and Ludhiana and created physical relation due to which a child was also born and now he refused to marry with her. It is further alleged that on 03.09.2017 all the accused persons have assaulted her and threatened to death.

Learned Counsel for the petitioner submitted that petitioners have been implicated falsely whereas, they are innocent and they have not committed any offence as alleged. He further submitted that case has been lodged on the basis of complaint filed by the informant in the Court. He further submitted that on 03.01.2018 statement of the informant was recorded under section 164 CrPC in which she stated that accused Md. Mustafa took her Hyderabad on the inducement of marriage and when informant asked him to marry, all the accused persons assaulted her. He further submitted that as per statement under section 164 CrPC, offence under section 366/376 is against the accused Md. Mustafa only. He further submitted that although petitioners have no concerned with the alleged offence and as per statement under section 164 Cr.P.C. of the victim, at the most only offence under setion 323 of I.P.C. is against the petitioners. He further submitted that there is no independent witness in the case. Learned Counsel for the petitioners prayed to allow the petition under section 227 CrPC and to discharge the petitioners.

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Learned A.P.P has vehemently opposed the prayer of the petitioner. He submitted that petition under section 227 CrPC filed on behalf of petitioners is not maintainable. He further submitted that accused persons took the informant to Hyderabad, Punjab and Ludhiana in collusion with Md. Mustafa and they have committed the offence of rape with her and on oppose they assaulted and threatened to kill her. He further submitted that informant has supported her case in her re-statement. He further submitted that as per para no. 14 to 17 of the case diary, the witnesses have supported the allegation of the informant. He further submitted that as per statement under section 164 CrPC, the informant has also supported the case. Thereafter, I.O. has submitted charge-sheet no. 64/2018 dated 31.10.2018 under section 341, 323, 504, 366, 376/34 of IPC against the petitioners. He further submitted that sufficient cogent material and evidence is available on record for framing charge against the petitioners.

Heard Learned Counsel for the petitioners and Learned A.P.P. on behalf of State through video conferencing.

Perused the record and case diary.

The petitioners are named in FIR. The informant alleged that accused persons named in FIR including the petitioners are involved in the occurrence, who have also assaulted and threatened to kill her. Moreover, as per para no. 15 of case diary, witness has also supported the allegation of the informant against the petitioners. Further, after completion of investigation, I.O. has submitted charge-sheet no. 64/2018 dated 31.10.2018 under section 341, 323, 504, 366, 376/34 of IPC against the petitioners. At this stage of framing of charge only prima facie case is to be considered against the petitioners.

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In view of facts and circumstances as discussed above, I find that sufficient material is available on record as well as case diary to frame charge against the petitioners. Thus, considering the aforesaid facts and circumstances of the case, petition dated 17-12-2020 under section 227 CrPC of the petitioners is **rejected**.

Now put up record for framing charge on 31.08.2021.



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