

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.17086 of 2016

Arising Out of PS.Case No. -244 Year- 2015 Thana -BAIRIYA District-
 WESTCHAMPARAN(BETTIAH)

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1. Karanjeet Paswan, S/o Kishore Paswan R/o Bairiya, P.S. Bairiya,
 District - West Champaran

.... Petitioner/s

Versus

1. The State of Bihar
 2. Kripa Kumari D/o Brahmdeo Mukhiya R/o Bairiya, P.S. Bairiya, District
 - West Champaran

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Prafull Chandra Jha-Advocate

For the Opposite Party/s : Mr. Nand Kumar(A.P.P.)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

03 09-08-2016

Heard learned counsel for the petitioner as well as

learned Additional Public Prosecutor.

2. Petitioner has challenged the order dated 15.03.2016 passed by the learned lower Court rejecting prayer of petitioner to discharge as well as order dated 22.06.2016 whereby framed charge against the petitioner and others.

3. Informant, a minor aged about 14 years, Student of Class-VII had alleged that at about 10.00p.m. on 13.09.2015, Karanjeet Paswan (Petitioner) as well as Manoj Gupta made house trespass and then thereafter, Karanjeet Paswan caught hold her breast, broken her string and then attempted to commit rape. By



such illegal activity, she awoken and caught hold Karanjeet Paswan, raised alarm. Her mother, cousin sister, uncle, sister in-law rushed, caught hold both of them. During aforesaid event, the family members of informant came and tried to snatch the aforesaid two apprehended accused persons, during course of which, they also assaulted, but could not succeed. The police arrived at the house whereupon got the written report as well as also took custody of the aforesaid accused persons.

4. It has been submitted on behalf of petitioner that the respective orders including framing of charge which has also been challenged under I.A. No.1546 of 2016 are bad in the background of the fact that the age of the victim has not been ascertained during course of investigation by way of medical examination. Divulgence on her own should not be accepted as a gospel truth. Therefore, application of POCSO Act is not attracted. With regard to remaining sections, it has been submitted that the prosecution party happens to be the aggressor whereupon the brother of the petitioner had already instituted a case since before institution of present case bearing Bairiya P. S. Case no.243 of 2015 and in retaliation, this case has been filed. Apart from this, it has also been submitted that during course of investigation though



the details of case are lacking, but I.O. had perceived that 7-8 cases is found at the end of the prosecution party against their enemies. That means to say, the prosecution party had developed habit to falsely implicate. That shows dubious character of the prosecution party. Consequent thereupon, the version so defined on behalf of prosecution should not be accepted. Consequent thereupon, both the orders impugned are fit to be set aside.

5. At the other end, the learned Additional Public Prosecutor opposed the prayer and submitted that merit of the case at the present stage is not to be adjudged in a manner as suggested, which is the subject matter of trial.

6. Instant petition has not been filed challenging the order of the cognizance and on account thereof, the tentacles having available to the Court while exercising power under Section 482 of the Cr.P.C. in terms of principle so laid down under *Bhajan Lal's Case* is not available at the present juncture. Apart from this, manner of appreciation is quite different as well as distinct while considering the event of charge/ discharge than during consideration of trial, malicious prosecution if any, happens to be within the exclusive domain while considering the trial if substantiated, but the same is not available at the present



moment. The only theme which the Court is expected to search out at the present stage is presence of sufficient material or not. That sufficient material in terms of Section 227 of the Cr.P.C. is the subject matter of elaborate discussion at the end of the Hon'ble Apex Court at different occasion and more recently. *In Sonu Gupta v. Deepak Gupta & Ors. reported in 2015(2) P.L.J.R. SC 321*, it has been held:-

“8. It is also well settled that cognizance is taken of the offence and not the offender. Hence at the stage of framing of charge an individual accused may seek discharge if he or she can show that the materials are absolutely insufficient for framing of charge against that particular accused. But such exercise is required only at a later stage, as indicated above and not at the stage of taking cognizance and summoning the accused on the basis of prima facie case. Even at the stage of framing of charge, the sufficiency of materials for the



purpose of conviction is not the requirement and a prayer for discharge can be allowed only if the court finds that the materials are wholly insufficient for the purpose of trial. It is also a settled proposition of law that even when there are materials raising strong suspicion against an accused, the court will be justified in rejecting a prayer for discharge and in granting an opportunity to the prosecution to bring on record the entire evidence in accordance with law so that case of both the sides may be considered appropriately on conclusion of trial.”

7. In the aforesaid background when the allegation has been gone through, it is evident that victim being aged about 14 years and further, had alleged against the petitioner to have caught hold her breast and further, attempted to commit murder after breaking string of her pant, happens to be within the ambit of Section 7 of the POCSO Act and the same is found punishable under Section 8 thereof. Whether age of the victim happens to be

14 years or more than 14 years is subject matter of trial during course of which, petitioner will have an opportunity to cross-examine the victim on that very score, so far present stage is concerned, her age to be of 14 years is found uncontroverted whereupon the learned lower Court had rightly rejected the prayer of the petitioner as well as also framed the charge.

8. Consequent thereupon, instant petition as well as I.A. No.1546 of 2016 are rejected.

(Aditya Kumar Trivedi, J)

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