

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.7839 of 2015

Arising Out of PS.Case No. -380 Year- 2014 Thana -MUZAFFARPUR SADAR District-
MUZAFFARPUR

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Diljan Mian @ Diljan Ansari @ Md. Diljan Ansari son of Late Sahu Mian, resident
of village - Sherpur, P.S.- Sadar, District- Muzaffarpur.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Mritunjay Kumar, Advocate

For the State : Mr. Md. Ataur Rahman, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 08-04-2016

By way of the present application preferred under section 482 of the Code of Criminal Procedure (for short “Cr.PC”), the petitioner sought for quashing of the order dated 2.2.2015 passed by the learned Special Judge, POCSO, Muzaffarpur in Sadar P.S. Case No.380 of 2014 whereby the petition filed on behalf of the petitioner on 19.1.2015 for holding that no case of the Protection of Children from Sexual Offences Act, 2012 (for short “the Act of 2012”) is made out against him and remitting the case to the court of learned Chief Judicial Magistrate, Muzaffarpur for trial has been rejected.

2. It has been contended by the learned counsel for the petitioner that the informant has not disclosed her age in the FIR and her medical examination was also not conducted during investigation. He has contended that in absence of proof of age of the victim, no

case for the offence under the provision of the Act of 2012 is made out.

3. I have perused the impugned order dated 2.2.2015 passed by the learned Special Judge, POCSO, Muzaffarpur. It would be evident from the said order that the victim has disclosed her age to be fourteen years in her subsequent statement made before the police and maternal grand mother of the victim, a minor girl aged about fourteen years, has alleged that on the day of occurrence the petitioner disrobed her and made her naked. Taking these facts into consideration the court below held that the ingredients of the offences punishable under sections 8 and 15 of the Act of 2012 are clearly attracted in the present case and rejected the application of the petitioner.

4. The parliament has enacted the Act of 2012 with object to protect children from offences of sexual assault, sexual harassment and pornography

5. Section 2(d) of the said Act defines “child” as under:

“2(d) “Child” means any person below the age of eighteen years.”

6. Section 7 of the Act of 2012 defines “sexual assault” and section 8 of the said Act prescribes punishment for sexual assault.

7. Regard being had to the allegations made in the FIR as also the materials collected during investigation, as described in the

impugned order, this Court is of the opinion that the ingredients of the offence of sexual assault punishable under section 8 of the Act of 2012 are clearly attracted in the present case.

8. In that view of the matter, I find no illegality in the order passed by the learned Special Judge whereby the application for remitting the matter back to the court of Magistrate has been rejected.

9. Accordingly, the application, being devoid of any merit, is, hereby, rejected.

(Ashwani Kumar Singh, J)

Md.S./-

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