

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.438 of 2015

Arising Out of PS.Case No. -null Year- null Thana -null District- SITAMARHI

Dr. Ramvinod Jha Son of Late Sada Nand Jha, At and P.O. Tilk Tajpur, Via Belsand, P.S. Rannisaidpur (Sitamarhi).

.... Petitioner/s

Versus

1. The State of Bihar (through The Chief Secretary, Bihar, Patna)
2. Zakir Hussain first informant Son of Late Salim at Fulwaria, P.S. Runnisaidpur, District Sitamarhi.
3. The Superintendent of Police, Sitamarhi.
4. The S.D.P.O. Sadar Sitamarhi.
5. The Officer-in-charge of Police, Runnisaidpur (Sitamarhi)
6. Asmin Khatoon daughter of Zakir Hussain, at Fulwaria, P.S. Runnisaidpur (Sitamarhi).

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Dr. Ram Vinod Jha (in person)

For the Respondent/s : Mr. Shyameshwar Dayal, A.P.P.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 20-07-2016

Heard Dr. Ram Vinod Jha, the petitioner, in person and Mr. Shyameshwar Dayal, learned Additional Public Prosecutor for the State.

2. By way of the present application preferred under sections 397 and 401 of the Code of Criminal Procedure (for short Cr.P.C.), the petitioner seeks quashing of the order dated 26.03.21015 passed by the learned 2nd Additional Sessions Judge, Sitamarhi in Sessions Trial No. 175 of 2014 whereby the application of the petitioner preferred under section 227 of the Cr.P.C. for discharge from Runnisaidpur P.S. Case No. 213 of 2013 registered

under sections 363 and 366A/34 of the Indian Penal Code has been rejected.

3. The aforesaid first information report was registered on the basis of a written report submitted by one Zakir Hussain to the Officer-in-charge of Runnisaidpur police station on 02.07.2013. It has been alleged in the first information report that the petitioner is a Homeopathic doctor and in course of treatment of his daughter he came in her contact. He also started imparting her tuition and, subsequently, she was abducted by the petitioner.

4. It is submitted by the petitioner that a false and fabricated case has been instituted against him at the behest of some anti social elements. The victim is a major girl. The Doctors, who examined her, have recorded her age to be 20 years. The Medical Board has not found any positive evidence of rape having been committed upon her. It is submitted that the informant has made several contradictory statements during investigation before the police and in that view of the matter, there is no ground for framing of charge against the petitioner and putting him on trial.

5. On the other hand, Mr. Shyameshwar Dayal, learned A.P.P. for the State has submitted that in the first information report the informant has disclosed the age of his daughter to be 15 years. Upon recovery, the victim has made her statement under



section 164 Cr.P.C., which has been recorded by a Judicial Magistrate wherein she has disclosed her age to be 16 years and has also stated that out of her own sweet will she was having physical relationship with the petitioner. He has submitted that the petitioner is aged over 60 years and his act of establishing the physical relationship with a minor girl aged about 16 years would certainly amount to rape as also the offences punishable under various sections of Protection of Children from Sexual Offences Act, 2012.

6. I have heard the petitioner in person and learned counsel for the State and perused the materials available on record. It would appear from the marks-sheet of matriculation examination of the petitioner issued by the Bihar School Examination Board, Patna that her date of birth has been recorded as 20.01.1997. The alleged occurrence is said to have taken place in the beginning of July, 2013. In that view of the matter, on the date of occurrence the victim was certainly a minor below the age of 16 years. It is well settled that the opinion of the medical expert regarding age is always tentative. Keeping in mind the age of the victim recorded in the school register and the statement of the victim herself as also the father of the victim, it is difficult to hold that the victim was major on the date of occurrence. It has rightly been submitted by the learned counsel for the State that consent would have no meaning in case a

girl, who is aged less than 16 years, consents for physical relationship. The alleged act of the petitioner would certainly constitute a cognizable offence. I further find from perusal of the case diary that several witnesses examined during the course of investigation have supported the allegation made in the first information report by the informant of the case. Hence, it cannot be held that there is no ground for proceeding against the petitioner in the case in hand.

7. In that view of the matter, I find no merit in this application. Accordingly, this application is dismissed.

(Ashwani Kumar Singh, J)

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