

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.307 of 2016

Arising Out of PS.Case No. -null Year- null Thana -null District- NALANDA (BIHARSHARIFF)

1. Raj Ballabh Prasad @ Raj Ballabh Prasad Yadav S/o Jehal Prasad, Resident of Village:- Pathara English , P.O.- Orhanpur, P.S.- Muffasil, District- Nawada.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Home Department, Govt. of Bihar, Patna.
3. The Director General of Police, Bihar, Police Head Quarter, old Secretariat, Patna.
4. The Deputy Inspector General of Police, Patna Range, Patna.
5. The Superintendent of Police, Nalanda at Biharsharif.
6. The S.H.O., Mahila Police Station, Biharsharif.
7. Priti Kumari, D/o- Jagarnath Prasad, Resident of Village- Sultanpur, P.S.- Rahui, Distt- Nalanda.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Jitendra Singh, Sr. Adv.
Mr. Kundan Kumar Singh, Adv.
Mr. Bishwajeet Singh
For the Respondent/s : Mr. Anjani Kumar Singh, AAG-6
Mr. Shailendra Kumar Singh, AC to AAG-6

CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

ORAL JUDGMENT

Date: 04-07-2016

Heard Mr. Jitendra Singh, learned Counsel, appearing on behalf of the petitioner, and Mr. Anjani Kumar, learned Additional Advocate General No.6, appearing on behalf of the State-respondents.

Aggrieved by the impugned order, dated 06.06.2016, the petitioner, who is an accused in Mahila P.S. Case No.15 of 2016, pending in the court of learned Additional Sessions Judge, 1st-Cum-



Special Judge, Nalanda, at Biharsharif, has sought for, *inter alia*, quashing of the order, dated 06.06.2016, whereby and whereunder the learned Trial Court has framed charges against the petitioner on the same day the police papers were given to the petitioner without giving, him, any opportunity much less any reasonable opportunity to examine the police papers and seek legal remedy.

The order, dated 06.06.2016, passed in Mahila P.S. Case No.15 of 2016, pending in the court of learned Additional Sessions Judge, 1st-Cum-Special Judge, Nalanda, at Biharsharif, framing of charge, is under challenge on the ground as indicated above that without giving the accused all those materials on which the prosecution relied upon, the charges were framed without giving any time for preparation to make his submission on the discharge.

The record reveals that on 06.06.2016, at 10:00 A.M., the copies of the statements and documents were furnished to the accused. The materials, so supplied, consisted of about 309 pages. This factual assertion, which has been made on behalf of the petitioner, has gone unchallenged.

From the order passed on 06.06.2016 itself, it appears that the accused had, indeed, made an application for supply of all those materials, which had been collected during investigation and

on which the prosecution had relied upon, as can be gathered from the counter affidavit filed by the State-respondents, such as, 6 DVD's, 7 memory cards, 4 G.B. Nexus 2 numbers.

There is no dispute before this Court that electronic materials, which have been mentioned above, could be relied upon by the prosecution. In such a situation, the defence was entitled to a copy of whatever materials were relied upon. Apart from the fact that these electronic materials were not furnished to the accused, the charges were framed on 06.06.2016 itself at 11:30 A.M., wherein the learned Judge has mentioned that the learned Special Public Prosecutor has opened the case describing the charges brought against the accused persons and the evidence, which is proposed to be adduced to prove the guilt of the accused and after hearing both the parties and perusing the record, he found that there were sufficient materials to frame the charges against the accused.

We may pause here to point out that the learned Judge has given no indication at all as to what submission had been made by the accused and it is the case of the accused that though he wanted time to make his submission against framing of charge, he was not given adequate time enabling him to make his submission against framing of charges. From the hasty manner in which the case has

been proceeded with leaves no room for doubt that no effective opportunity of hearing was given to the defence before the charges had been framed. A reference has been made, in this regard, by Mr. Jitendra Singh to a copy of the order, dated 17.07.2014, passed by learned Single Judge of this Court, in Criminal Miscellaneous Case No.32938 of 2011. The relevant portion of the order reads:-

“ In any view of the matter, it is one of the important rights of an accused in criminal case to prefer an application for discharge and the same has to be decided by the court, in seisin of the case, in accordance with law.

In view of the fact that the petitioner was deprived of the opportunity of placing his case of discharge before the trial court, the order framing charge is set aside.”

It has been pointed out by Mr. Anjani Kumar, learned Additional Advocate General No.6, that the Code of Criminal Procedure does not envisage making of any application for discharge. Though, as rightly pointed out, the Code of Criminal Procedure does not make any specific provision for making an application for discharge, such an application is not barred in law. What is, however, required is that all the documents and materials, which the prosecution seeks to rely upon, must be furnished to the



accused and it is after having given adequate and effective opportunity to the accused that the hearing on the charge shall take place. If the Court is satisfied that the materials collected during investigation makes out a case against an accused, charges can be framed; or else, the accused needs to be discharged. However sensitive a case may be or whatever news value a case may have, miscarriage of justice cannot be permitted.

In the case at hand, if the trial is allowed to be proceeded with in violation of the law, as indicated above, it would be travesty of justice.

In the result and for the foregoing reasons, the impugned order, dated 06.06.2016, framing the charges against the accused petitioner, is hereby set aside and quashed.

In order to avoid delay in the disposal of the case, it is hereby directed that the accused-petitioner must be provided with copies of all such materials, which are being relied upon by the prosecution, and, thereafter, giving the accused petitioner adequate time and opportunity, as may be deemed necessary by the learned trial court, the case shall be taken up for hearing on the point of framing of charges and, then, necessary order in accordance with law shall be passed; more so, because the offences alleged attract the

provisions of the Protection of Children from Sexual Offences (POCSO).

Let the records be sent forthwith with a copy of this order to the court below.

(I.A. Ansari, ACJ)

K.C.jha/-

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