

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.46336 of 2013

Arising out of order passed in Case No. CII 1/2007, Tr. No. 1681/2013, by the court of CJM, Siwan

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Shashi Kant Rai, Son of Late Ram Bahadur Rai, Resident of Village - Suhawal,
Police Station - Suhawal in the district of Gajipur (U.P.)

.... Petitioner

Versus

1. The State of Bihar
2. Kamlawati Devi, Wife of Sri Ram Chandra Sah, Resident of Village + P.O.-
Semariya (Gopal Rai Ka Tola), P.S.- Nautan in the district of Siwan.

.... Opposite Parties.

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Appearance:

For the Petitioner/s : Mr. Sunil Kumar and
Mr. Ranjeet Kumar, Advocates.
For the Opposite Party/s : Mr. Ajay Kumar Jha, APP.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 26-07-2017

Heard learned counsel for the petitioner and learned A.P.P.
for the State.

2. The petitioner in the present case is seeking quashing of
the order dated 23.08.2007 passed by the learned Chief Judicial
Magistrate, Siwan in Case No. CII 1/2007, Trial No. 1681/2013, by
which the learned Magistrate has taken cognizance of the offence
punishable under Section 14(1) of the Child Labour (Prohibition and
Regulation) Act, 1986 (hereinafter referred to as 'the Act').

3. The case of the prosecution is that the opposite party no.
2 submitted a written application before the District Magistrate, Siwan
alleging that her son, who was aged about 14 years, had been engaged



as a servant in the house of the Ex-Circle Officer, Mairwan (the petitioner) but he was not paid his wages and after his transfer the Circle Officer did not pay heed to the request of the opposite party no. 2 to pay the outstanding amount. There are other allegations also which this Court need not discuss at this stage.

4. A prosecution report has been filed in this case by the Labour Superintendent, Siwan, who has found that the son of the opposite party no. 2 was below 14 years of age when he was engaged by the petitioner and, therefore, he prayed for cognizance under Section 14 (1) of the Act. The prosecution report refers to the statements of the boy as well as his mother and then the medical report of the In-charge Medical Officer. The main attack of the learned counsel on behalf of the petitioner is on the medical report as, according to him, the medical report is tentative in nature and is not a conclusive proof of the fact that the boy was below 14 years of age. Learned counsel submits that in fact it is a case of no evidence.

5. On the other hand, learned A.P.P. representing the State opposed the application submitting that there are evidences available on the record and no illegality or infirmity may be found with the order taking cognizance as at this stage only a *prima facie* view is to be taken and the learned Magistrate is not obliged to consider the case keeping in mind that whether the materials would ultimately lead to



conviction of the accused or not.

6. Having heard the parties and upon perusal of the record I am unable to accept the submissions of the learned counsel for the petitioner as it would require me to go into the merits of the allegations and to consider the evidentiary value of the medical report submitted by the In-charge Medical Officer. This Court is conscious of the legal position with respect to exercise of power under Section 482 of the Code of Criminal Procedure. The Court would not like to go into the merits of the application or would not take itself to judge the evidentiary value of the document, such as, medical report. The petitioner, if so advised, may raise all these issues as to sufficiency of materials at the stage of framing of charge.

7. The application thus stands dismissed.

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
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