

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.24590 of 2018

Arising Out of PS. Case No. -27 Year- 2015 Thana -ALAMGANJ District- PATNA

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Tunna Paswan, son of Ramchandra Paswan, Resident of Devi Asthan, Gur Ki
Mandi, Arfabad Colony, Police Station-Alamganj, Distict-Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. Satynarayan Prasad, son of Late Sita Ram Singh, Resident of Mohalla-Arfabad
Colony, Gur Ki Mandi, Police Station-Alamganj, District-Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Anil Kumar, Advocate
For the Informant : Mr. Arbind Kumar Mouar, Advocate
For the State : Mr. M. K. Khare, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 25-08-2018

This application under Section 482 of the Code of Criminal Procedure has been filed by the petitioner for quashing the order dated 08.03.2018 passed by the learned Additional District & Sessions Judge-1st-cum-Special Court, POCSO, Patna in Special Case No. 45 of 2015 arising out of Alamganj Police Station Case No. 27 of 2015.

2. Though, initially Alamganj P.S. Case No. 27 of 2015 was instituted for the offences under Sections 323, 354 and 504 of the Indian Penal Code subsequently Sections 6 and 7 of the Protection of Children from Sexual Offences Act, 2012 (for short 'the Act') was



added in the First Information Report (for short 'F.I.R.').

3. By an application dated 23.02.2018, the petitioner had pleaded that since proceeding of the case was not completed within a period of one year from the date of taking cognizance of the offence, the proceedings of the criminal prosecution should be terminated. The court below, keeping in mind the provision prescribed under Section 35 of the Act as well as the stage of the trial, rejected the application of the petitioner vide impugned order dated 08.03.2018.

4. Assailing the impugned order dated 08.03.2018, learned counsel for the petitioner submitted that the court below has erred in law as well as on facts. He contented that in view of the express provision prescribed under Section 35(1) and (2) of the Act, it was mandatory for the court to have completed the trial within a period of one year from the date of taking cognizance of the offence. Since the trial court failed to complete the trial within the period stipulated under the Act, the trial court ought to have terminated the proceeding.

5. I have heard learned counsel for the petitioner and carefully perused the record.

6. In the instant case, the cognizance was taken on 23.05.2015. The trial court in its impugned order dated 08.03.2018 has recorded that the petitioner adopted various delaying tactics as a



result of which charges could not be framed prior to 20.08.2016. However, after framing of charge on 20.08.2016, witnesses were examined on different dates. It has further recorded that whenever the witnesses were in attendance, the defence avoided to cross examine them. It was because of the delaying tactics of the defence, when P.W. 3 was not examined and was discharged an application was filed for recalling him, which was allowed subject to deposit of cost of rupees 4,000/-.

7. Under the aforesaid circumstances, the court below has recorded that now all the witnesses except the victim and the investigating officer have been examined. As the application was filed by the petitioner in order to further delay the disposal of the trial, it rejected the same highlighting the deliberate delay caused by the accused in disposal of the trial.

8. The preamble of the Act reads as under:-

“An Act to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences and for matters connected therewith or incidental thereto.

WHEREAS clause (3) of article 15 of the Constitution, inter alia, empowers the State to make special provisions for



children;

AND WHEREAS, the Government of India has acceded on the 11th December, 1992 to the Convention on the Rights of the Child, adopted by the General Assembly of the United Nations, which has prescribed a set of standards to be followed by all State parties in securing the best interests of the child;

AND WHEREAS, it is necessary for the proper development of the child that his or her right to privacy and confidentiality be protected and respected by every person by all means and through all stages of a judicial process involving the child;

AND WHEREAS, it is imperative that the law operates in a manner that the best interest and well being of the child are regarded as being of paramount importance at every stage, to ensure the healthy physical, emotional, intellectual and social development of the child;

AND WHEREAS, the State parties to the Convention on the Rights of the Child are required to undertake all appropriate national, bilateral and multilateral measures to prevent-



- (a) the inducement or coercion of a child to engage in any unlawful sexual activity;*
- (b) the exploitative use of children in prostitution or other unlawful sexual practices;*
- (c) the exploitative use of children in pornographic performances and materials;*

AND WHEREAS, sexual exploitation and sexual abuse of children are heinous crimes and need to be effectively addressed.”

9. In ERA through Dr. Manjula Krippendorf vs State (NCT of Delhi) and Another [(2017) 15 SCC 133, the Supreme Court observed:-

“..... the very purpose of bringing a legislation of the present nature is to protect the children from the sexual assault, harassment and exploitation, and to secure the best interest of the child. On an avid and diligent discernment of the Preamble, it is manifest that it recognises the necessity of the right to privacy and confidentiality of a child to be protected and respected by every person by all means and through all stages of a judicial process involving the child. Best interest and well-being are regarded as being of paramount importance at every stage to



ensure the healthy physical, emotional, intellectual and social development of the child. There is also a stipulation that sexual exploitation and sexual abuse are heinous offences and need to be effectively addressed. The Statement of Objects and Reasons provides regard being had to the constitutional mandate, to direct its policy towards securing that the tender age of children is not abused and their childhood is protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity. There is also a mention which is quite significant that interest of the child, both as a victim as well as a witness, needs to be protected. The stress is on providing child-friendly procedure. Dignity of the child has been laid immense emphasis in the scheme of legislation. Protection and interest occupy the seminal place in the text of the POCSO Act”.

10. On a perusal of the provisions prescribed under Section 35 of the Act, I find that clause (1) provides period for recording of evidence of child within a period of 30 days of the Special Court taking cognizance of the offences whereas, clause (2) provides that Special Court shall complete the trial, as far as possible,



within a period of one year from the date of taking cognizance of the offence.

11. Apparently, there is nothing in Section 35 of the Act from which it can be inferred that if the trial is not completed within one year of taking cognizance, it has to be terminated.

12. The provisions of Section 35 of the Act make it clear that the legislature has set guidelines for the State and the court to take steps expeditiously so that a child is protected and trial is appropriately conducted in order to achieve the purpose set out in the preamble of the Act.

13. In view of the discussion made above, I see no illegality in the order impugned. The application lacks merit. It is dismissed accordingly. The trial court is directed to conclude the trial expeditiously.

(Ashwani Kumar Singh, J)

Md.S./-Sanjeev

AFR/NAFR	NAFR
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