

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.833 of 2015

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

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Md. Muturza @ Md. Murtuza, son of Md. Farman, resident of Village- Pato Belahi,
P.S.- Singhia, District- Samastipur.

.... Petitioner

Versus

1. The State of Bihar.
2. Md. Jalimuddin, son of Md. Iliyas
3. Md. Idrish
4. Md. Anwarul
5. Md. Jahangir All sons of Late Md. Basir null
6. Md. Zafirul
7. Md. Azim Both sons of Md. Ilias All are resident of Village- Belahi, P.S.- Singhia, District- Samastipur.
8. Md. Ayub, son of Azim, residency of Village- Adalpura, P.S. Singhia, District- Samastipur.

.... Respondents

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Appearance :

For the Petitioner : Mr. Ashok Kumar Mishra, Adv.

For the Respondents : Mr. Harendra Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

CAV JUDGMENT

Date: 01-10-2018

This revision application has been preferred against the order dated 3.8.2015 passed by the learned Sessions Judge, Samastipur in Cr.Rev. No.309 of 2013, which had been filed by the Opposite Party for setting aside the order taking cognizance dated 3.5.2013 passed by the ACJM, Rosera in Singhia P.S.Case No.73 of 2012.

2. The prosecution case in short is that a written report was filed by the petitioner before the Dy.S.P., Rosera with the facts that on 15.7.2012 at about 7 P.M. while his daughter Isha Khatoon went to attend call of nature outside the house, she did not return even after



more than two hours and thereafter the petitioner/informant along with his family members started searching her but she could not be traced out. Further prosecution case is that on 14.7.2012, Md. Jasimuddin, a co-villager and his mother came with a proposal to marry Md. Jasimuddin with Isha Khatoon but the said proposal was refused and on that he had threatened to kidnap his daughter.

3. The police after investigation found the case true under Section 366A of the IPC and accordingly final form was submitted, however, the learned ACJM, Rosera differing with the same took cognizance of the offence under Section 366A/34 of the IPC against the Opposite Party No.2 and all the accused persons vide order dated 3.5.2013.

4. Against the order dated 3.5.2013 passed by the ACJM, Rosera, the Opposite party/accused preferred Cr. Revision No.309 of 2013, which was allowed vide order dated 22.6.2013 and order dated 3.5.2013 passed by the ACJM, Rosera was set aside.

5. It further appears that from perusal of the record that against the order dated 22.6.2013 passed by the learned Sessions Judge, Samastipur, the petitioner moved before the Hon'ble Court in Cr. Revision No.1099 of 2013 for setting aside the order dated 22.6.2013 passed by the learned Sessions Judge, Samastipur. The aforesaid Criminal Revision No.1099 of 2013 was partly allowed by a Co-



ordinate Bench of this Court, vide order 25.8.2014 with a direction to the court below that the petitioner be added as Opposite Party in Cr. Revision No.309 of 2013 and after giving due opportunity to all the affected persons he will pass an order afresh in accordance with law.

6. It further appears that the learned Sessions Judge issued notice to the petitioner after hearing the parties concerned and allowed Cr. Revision No.309 of 2013 preferred by accused/Opposite Party and set aside the order taking cognizance dated 3.5.2013 passed by the learned ACJM, Rosera.

7. Being aggrieved by the order dated 3.8.2015, the present Revision Application has been preferred by the petitioner on the ground that the impugned order suffers from inherent illegality as medical report of the deceased daughter of the petitioner disclosed her age between 15 ½ to 16 years, as such the statement of the victim girl under Section 164 Cr.P.C. has no value in the eye of law but the learned Sessions Judge considering the fact that under Mahomedan law a girl attaining the age of puberty can marry without consent of her parents allowed the Revision Application and failed to consider that under Section 366A of the Indian Penal Code as well as Indian Majority Act, the victim daughter is minor and as such her statement has no value in the eye of law. It has also been submitted that the learned Sessions Judge has failed to consider that several paragraphs



of the case diary have found mentioning in the order taking cognizance, hence, the impugned order is against the materials available on the record and suffers from illegality and impropriety.

8. On the other hand learned counsel for the opposite party nos. 2 to 8 has submitted that under Mahomedan law a girl attaining the age of puberty can marry without consent of her parents and the age of the puberty of girl is presumed to be 15 years, as such the victim girl was minor and moreover there is nothing available on the record to show that she was enticed and compelled to go out of the custody of her parents and as such the impugned order passed by the learned Sessions Judge does not suffers from any illegality rather appears to be just and proper in support of its contention that Muslim girl attaining the age of puberty can marry without consent of her parents, the Opposite Party Nos. 2 to 8 have relied upon a single Bench judgment of this Court in the case of *Md. Idris Vrs. State of Bihar and Ors.* reported in *1980 Criminal Law Journal 764* and an unreported decision of this Court in the case of *Saba Praveen Vrs. State of Bihar* passed in *Cr. Misc. No.24990 of 2015*.

9. Having heard both parties and on perusal of the record it appears that the impugned order of the Sessions Judge setting aside the order taking cognizance under Section 366A/34 of the IPC is under challenge.



10. So far Section 366A of the IPC is concerned, it provides as follows : -

“366A. Procuration of minor girl.—Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.”

11. Further the Indian Majority Act is that any person below the age of 18 years is minor. No doubt the Mahomedan Law provides that any Mahomedan of sound mind who has attained the puberty may enter into the contract of marriage and the aforesaid fact has also appeared from the judgment of *Md. Idris Vs. State of Bihar and Ors.* (*supra*) relied upon by the learned counsel for the petitioner and presumption about the puberty is on completion of age of 15 years. The aforesaid provisions deal with the case of marriage whereas any minor girl below to 18 years of age comes under the definition of minor girl under Section 366A of the IPC and Indian Majority Act also provides that any person less than 18 years shall be minor. So far question of reaching puberty is concerned, that is for the purpose of marriage only, however, the learned Sessions Judge has failed to consider the aforesaid aspect of the matter and also failed to consider that the victim lady is minor under definition of Section 366A of the IPC. On the other hand the leaned ACJM has relied upon the several



paragraphs of the case diary and finding sufficient materials, he has taken cognizance. So far judgment relied upon by the learned counsel for the Opposite Party No.2 to 8 are concerned that relates to the custody of a girl after marriage and does not deal with the case under Section 366A of the IPC.

12. On the other hand the judgment of *Md. Idris Vrs. State of Bihar & Anr. (Supra)* in para 5 also says that –

“The result will be that respondent no.5 on the relevant date may be minor under the Indian Majority Act or within the meaning of Section 366 of the I.P.C. but certainly she could have married without consent of her natural guardian.....”.

13. In view of the discussions made above, order of the Sessions Judge setting aside the order taking cognizance, vide order dated 25.8.2014 passed in Cr. Revision No.309 of 2013 is set aside.

14. Accordingly, this revision application is allowed.

(Vinod Kumar Sinha, J)

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AFR/NAFR	AFR
CAV DATE	N/A
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