

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.7536 of 2018

Arising Out of PS.Case No. -9 Year- 2016 Thana -GOBARHIA District-
WESTCHAMPARAN(BETTIAH)

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Chandra Kishore Mahto, son of Varan Mahto, Resident of Village- Naurangia Don,
Police Station- Gobarhiya, Sub Division- Ram Nagar, District- West Champaran
(Bihar).

.... Petitioner/s

Versus

The State of Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Baxi S.R.P.Sinha, Sr. Advocate
	:	Mr. Surendra Kumar Singh, Advocate
	:	Mr. Pankaj, Advocate
	:	Mr. Krishna Kumar Singh, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP
For the Informant	:	Mr. Suresh Prasad Sharma, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 20-08-2018

This application under Section 482 of the Code of Criminal Procedure (for short 'the Cr.P.C.') has been filed by the petitioner for quashing the order dated 03.01.2018 passed by the learned 1st Additional Sessions Judge, Bagaha-cum-Special Judge, West Champaran in POCSO case No. 06 of 2017 (CIS NO. 6890 of 2017) arising out of Gobarhiya P.S Case No. 09 of 2016 dated 21.10.2016 by which the application preferred by the petitioner under Section 227 of the Cr.P.C. for discharge from the case has been rejected.

2. Mr. Baxi S.R.P. Sinha, learned Senior Advocate appearing for the petitioner submitted that the impugned order dated



03.01.2018 has been passed mechanically without application of judicial mind by the trial court. He submitted that the act of taking cognizance can not be equated with the act of discharge as they are two different acts to be performed by the trial court at two different stages. He pleaded that the only ground for rejection of the petition filed under Section 227 of the Cr.P.C is that the court had passed an elaborate order on 01.11.2017. The said order dated 01.11.2017 is an order taking cognizance of the offence and that could not have been a ground for rejecting the application preferred by the petitioner. He submitted that before placing the case for hearing on the point of charge even the police papers, as required under section 207 of the Cr.P.C, were not supplied to the petitioner.

3. On the other hand, learned counsel appearing for the State being assisted by learned counsel appearing for the informant submitted that the petitioner has been made a named accused in a case registered under Section 302 of the Indian Penal code (for short 'the I.P.C.') in which the police have submitted charge-sheet for the offences punishable under Section 302 of the I.P.C. and section 4 of the Protection of Children from Sexual Offences Act (for short 'POCSO Act') and after perusing the first information report, materials collected in course of investigation and statement of the witnesses recorded under Section 161(3) of the Cr.P.C, the court took



cognizance of the offences vide order dated 01.11.2017 and thus, no error can be found with the order impugned passed by the court below whereby the application for discharge preferred by the petitioner has been rejected.

4. I have heard learned counsel for the parties and carefully perused the record.

5. It is true that the petitioner has been made an accused in a case registered for the offence punishable under Section 302 of the I.P.C. It is equally true that on completion of investigation, the investigating officer has submitted charge-sheet for the offences punishable under Section 302 of the I.P.C and Section 4 of the POCSO Act.

6. However, a careful perusal of the order impugned dated 03.01.2018 would show that the application under section 227 of the Cr.P.C has been rejected simply because the court had passed an elaborate order earlier on 01.11.2017. It reads as under:-

Dated 03.1.2018 - “Attendance of accused Chandra Kishor Mahto has been filed.

A petition has been filed on behalf of accused Chandra Kishor Mahto, under Section 227 Cr.P.C. It is pertinent to mention here that an elaborate order regarding merit of the case has been passed by this court **on dated 01/11/2017**. This petition is used by



the accused as a means to delay the framing of charge in this case. As such it stands rejected. The accused is directed to appear in person in the court on 08/01/2018 for framing of charge.” (emphasis mine)

7. The order dated 01.11.2017 mentioned in the aforesaid order dated 03.01.2018 passed by the court below reads as under:-

01.11.2017. “Attendance of prosecution has been filed. Representation on behalf of accused Chandra Kishor Mahto, accepted for today only.

Heard and perused the record.

In this record police has submitted charge-sheet no. 02/17 dt. 20.01.2017 against accused Chandra Kishor Mahto S/O Baren Mahto u/s 302 of I.P.C and 4 of POCSO Act, along with case diary.

Perused the CS, CD and the materials available on the record. On perusal of the materials available on the record, prima facie case appears to be made out under aforesaid sections and against above said accused.

Hence, cognizance is hereby taken against accused Chandra Kishore (Kumar) Mahton u/s 302 of I.P.C and u/s 4 of POCSO Act.

Posted at 05.12.2017 for hearing on the point of charge.”



8. From perusal of the aforesaid order dated 01.11.2017, it would be manifest that when the charge-sheet was submitted by the investigating officer, the court below found a prima facie case under Section 302 of the I.P.C and Section 4 of the POCSO Act against the petitioner and, thus, summoned him to face trial and posted the matter for hearing on the point of charge. Apparently, necessary documents as required under Section 207 of the Cr.P.C were not provided either to the accused or to his counsel after submission of charge-sheet and the case was posted for framing of charge.

9. Section 207 of Cr.P.C mandates that in any case where the proceeding has been instituted on a police report , the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:-

- (i) The police report;
- (ii) The first information report recorded under section 154 ;
- (iii) The statements recorded under sub-section (3) of Section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under sub-section (6) of section 173;
- (iv) The confessions and statements, if any, recorded under section 164;
- (v) Any other document or relevant extract thereof forwarded to the Magistrate with the police report



under sub-section (5) of section 173.

10. Since the offence punishable under Section 4 of the POCSO Act is triable by a Special Court and the power to take cognizance of the offence is also vested in the Special Court, the Special Court for all practical purposes acts like a Court of Magistrate. Under Such circumstance, it was incumbent upon the court to first supply to the accused a copy of the police report and other documents as required under Section 207 of the Cr.P.C. and only, thereafter, the court could have posted the matter for hearing on the point of charge. Apparently, the court has acted in utter haste and fixed the case for framing of charge even without supply of necessary documents as mandated under Section 207 of the Cr.P.C.

11. That apart, as the petitioner had filed an application under Section 227 of the Cr.P.C. for discharge from the case, it was incumbent upon the court to decide his application after hearing his submission and the submission on behalf of prosecution as also after considering the record of the case and the documents submitted therewith. However, not only the petitioner was not provided with necessary documents as noted above, his submissions made for discharge even in absence of documents have not been dealt with by the trial court while passing the impugned order. The trial court has dismissed the application by way of a perfunctory and cryptic order.



It has dismissed the petition on the ground that an elaborate order has already been passed on 01.11.2017. The said order dated 01.11.2017 is an order taking cognizance of the offence.

12. It has rightly been submitted on behalf of the petitioner that there is lot of difference between taking cognizance of the offence and framing of charge against the accused. At the stage of taking cognizance, the court is required to see as to whether there is prima facie material available on record or not whereas at the stage of framing of charge, the court has to consider as to whether there is sufficient material to proceed against the accused or not.

13. Having regard to the discussions made above, the order impugned cannot be sustained. Accordingly, the impugned order dated 03.11.2018 and all consequential orders passed by the learned 1st Additional Sessions Judge, Bagaha-cum- Special Judge in POCSO case No. 06 of 2017 (CIS NO. 6890 of 2017) arising out of Gobarhiya P.S Case No. 09 of 2016 are set aside.

14. The application filed by the petitioner under section 227 of the Cr.P.C shall be heard by the court below after complying with the requirements under section 227 of the Cr.P.C. The court below shall supply the relevant documents to the petitioner or his counsel within fifteen days of receipt of a copy of the order.

15. It is made clear that this Court has not expressed any



opinion on the merits of the application under Section 227 of the Cr.P.C. It would be open to the court below to pass any order, as it thinks proper, after hearing the parties and perusing the record.

16. The application stands allowed with the observations made hereinabove.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	
Transmission Date	

