

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.24064 of 2019

Arising Out of PS. Case No.-77 Year-2016 Thana- MAHILA PS District- East Champaran

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Md. Akram @ Akram Zahir Son of Zaheer Akhtar @ Md. Zahir Akhtar @
Sheikh Zaheer, Resident of Village - Banjaraha, P.S.-Kundwa Chainpur,
Distt.- East Champaran.

... .. Petitioner.

Versus

1. The State of Bihar.
2. Nusrat Khatoon D/o Sheikh Mikaulah, W/o Md. Faishal Resident of Village
- Banjaraha, P.s.- Kundwa Chainpur, Distt.- East Champaran.

... .. Opposite Parties.

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Appearance :

For the Petitioner/s : Mr. Md. Anis Akhtar
For the Opposite Party/s : Mr. Pawan Kumar Chaurasia

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**CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL**

ORAL JUDGMENT

Date : 25-04-2019

Heard learned counsel for the petitioner and
learned APP for the State on this application.

This application under Section 482 of the Code of
Criminal Procedure has been filed for quashing the cognizance
order dated 18.12.2017 passed by the 1st Additional Sessions
Judge-cum-Special Judge POCSO Act, East Champaran at
Motihari in Mahila P.S. Case No.77 of 2016, whereby the
learned Judge differing with the final form submitted by the
police took cognizance of the offence under Section 376 of the
Indian Penal Code and under Section 4 of the POCSO Act



against the petitioner.

The factual matrix of the case is that Mahila P.S. Case No.77 of 2016 was instituted under Sections 341, 342, 354-B, 506 and 376 of the IPC and Section 3, 4 & 6 of the POCSO Act against Md. Akram (petitioner) Sheikh Zahir (father of the petitioner), Anjum Ara (mother of the petitioner) and Sheikh Izhar, on the basis of written report of Nusrat Khatoon with the allegation in succinct that on 27.11.2016 at 9 PM in course of defecation in the field located in front of her house, abruptly Md. Akram arrived there and gagging her mouth shoved her on the ground disrobed her and committed rape against her. On the hulla made by her Sk. Serajul Haque, Aenul Haque, Sk. Tufique, Nausad and others rushed there then the accused left the scene. When her father and villagers approached the father of Md. Akram and made complaint rest accused persons extended threatening and made them to leave their house. But on putting pressure by the villagers he took two days time for performing marriage of his son with the informant. After passing of the two days, when her father and villagers insisted the father of the petitioner for marriage firstly he avoided them and finally did not perform the marriage of Md. Akram with the informant.



The aforesaid case was investigated by the police and after investigation of the case the police submitted final form finding the case untrue. But the learned lower Court, perusing the case diary and material available on record, differing with the police took cognizance of the offence against the petitioner Md. Akram under Section 376 of the Indian Penal Code and under Section 4 of the POCSO Act.

It is submitted by learned counsel for the petitioner that no such occurrence as alleged ever took place. The petitioner has been falsely implicated in the case by the informant only to mount pressure upon him to perform marriage with her and after investigation of the case and finding the case untrue, police submitted final form against the accused persons. It is further submitted that the doctor has reported the age of the victim between 17-18 years and the headmaster of the school has also reported the date of birth of the informant as 15.06.1997 as mentioned in the admission register and as per the aforesaid date of birth the informant was major at the time of occurrence. From perusal of the statement of the informant recorded under Section 164 Cr.P.C., it appears that the informant has lodged the case only to mount pressure upon the petitioner to perform marriage with her. Now both the petitioner and the



informant have got married at some different places and living peacefully and the matter has been compromised between the parties. Hence, the aforesaid order of taking cognizance against the petitioner is liable to be set aside.

On the other hand, learned APP for the State vehemently opposing the application submitted that there is allegation of outraging the modesty of the informant, who is a minor girl, against the petitioner. The victim in her statement recorded under Section 164 Cr.P.C. has also stated that the rape has been committed against her by the petitioner and considering the relevant paras of the case diary adumbrating the place of occurrence, statement of the witnesses, medical report of the victim and her statement under Section 164 Cr.P.C., the learned Court below finding making out prima facie case against the petitioner has taken cognizance of the offence against the petitioner differing the final form submitted by the police. The documents filed by the petitioner regarding age of the informant (victim) is not to be considered at the stage of taking cognizance. Hence, the aforesaid order passed by the learned Court below is legal and valid and this application is liable to be dismissed.

From perusal of the record, it appears that there is



specific allegation of committing rape against the informant by the petitioner. As per the F.I.R., informant was minor at the time of occurrence. Though after investigation of the case the police has submitted final form against the accused persons but after perusal of the relevant papers of case diary adumbrating statement of witnesses, P.O., medical examination report of the victim and her statement recorded under Section 164 Cr.P.C. finding sufficient materials for taking cognizance against the petitioners, the learned lower Court has taken cognizance of the offence under Section 376 IPC and Section 4 of the POCSO Act against the petitioner differing with the final form submitted by the police. From perusal of the statement of the informant recorded under Section 164 Cr.P.C., it appears that the informant has candidly stated that the petitioner has committed rape against her at the time of occurrence. Though the learned counsel for the petitioner tried to persuade the Court that at the time of occurrence the informant was major by filing medical report of the informant as well as the letter of the headmaster of the school but at the time of taking cognizance the aforesaid defence evidence is not required to be considered.

Having regard to the facts and circumstances of the case, I do not find any illegality in the impugned order. This



application is shorn of merit and is accordingly dismissed.

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	AFR
CAV DATE	NA
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