

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.57840 of 2019

Arising Out of PS. Case No.-334 Year-2019 Thana- AMARPUR District- Banka

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SOURAV KUMAR S/o- Dilip Singh Residence of Village- Chhotikaitha,
P.S.- Amarpur (Fullidumar), District- Banka.

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Vibhakar Kumar

For the Opposite Party/s : Mr.Ganesh Prasad Singh

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

2 17-10-2019 Heard learned counsel for the petitioner and learned
counsel for the State.

Learned counsel for the informant is also present.

It appears that the victim girl is a minor and her age has not yet been determined by the Court. The certificate age as stated in the impugned order appears to be 15 years of age and yet the Chief Judicial Magistrate had released the girl in favour of the mother of the present petitioner, who is also an accused in this case. The informant had filed a petition before the Additional Sessions Judge- 1st, Banka stating that the case was one under the POCSO Act and the Chief Judicial Magistrate has no jurisdiction to entertain the application nor released the victim girl in favour of accused persons. The Court while entertaining the said application has passed a reasoned order



dated 17.09.2019 in G.R. No. 99 of 2019.

Certified copy of the aforesaid order has been produced by the informant in this court and the relevant portion of the order is extracted hereinunder:-

“ This case is fixed for order on the petition filed by the informant on the date 02.08.2019 stating therein that the victim Jyoti Kumari whose date of birth is 25.03.2004 in the school record was kidnapped for the purpose of marriage by the accused Sourav Kumar and others on dated 10.07.2019. It is further stated that thereafter case was lodged with the police and the police after taking into custody Sourav Kumar and Jyoti Kumari forwarded before the Court. From where the accused Sourav Kumar was sent to the judicial custody and statement u/s 164 Cr.P.c. of victim Jyoti Kumari was recorded in the court. It is further submitted that after recording the statement u/s 164 Cr.P.c. the learned Chief Judicial Magistrate, Banka, after considering the marriage as valid one released Jyoti Kumari in favour of the accused persons. It is lastly prayed that since Jyoti Kumari is minor girl and she is in custody of the accused persons hence she may be released in favour of her natural guardian.

This petition was objected by the defence by filing written reply dated 22.08.2019 stating therein that the petition filed by the informant is not maintainable, as it is admitted by the informant himself that Jyoti Kumari was married with Sourav



Kumar on 10.07.2019. It is further submitted that whether the marriage is legal or illegal it has to be considered by the competent court and the same is legal and valid unless it is declared by the competent court. It is further submitted that the victim Jyoti Kumari has given her statement u/s 164 Cr.P.c. in which she has admitted that she has married with the accused Sourav Kumar. It is further stated that the order passed by the learned lower court can be challenged before the revisional court and this is not proper forum to file this petition. It is further submitted that the age of Jyoti Kumari is still not ascertained. So any order passed at this stage will not be proper and the order passed by the learned Chief Judicial Magistrate is legal, correct and proper. Hence the petition filed by the informant may be rejected.

Heard both the parties and perused the record, it appears that the school certificate filed by the informant shows that her date of birth is 25.03.2004. It is also appears that while recording statement u/s. 164 Cr.P.C. the victim herself has told her age as 15 years but the learned court has assessed her age about 17 years. Photo copy of Aadhar Card of the victim also shows her date of birth is 25.03.2004. Therefore it prima facie appears that the victim was clearly under 18 years of age. A perusal of order dated 11.07.2019 passed by the learned C.J.M., Banka also shows that the order release of the minor girl was passed without applying judicial mind as the same is written in most casual manner in a serious case under



sections 366A, 363A/34 of the I.P.C. and section 8 of POCSO Act. It appears that the victim had stated before the learned C.J.M., Banka that she feared that she would be killed hence she wanted to go with her in-laws who are accused in this case and the learned C.J.M., Banka as stated earlier without applying judicial mind has released the minor victim in favour of her mother-in-law who is also one of the accused of this case. It is well settled that if any case comes under provision of POCSO Act then no any other court has any jurisdiction to passed any order in such cases except the court designated for the same but the learned CJM, Banka over looked the mandatory provision of law and exceeded his jurisdiction which was not vested in him. It is also surprisingly that when the so-called mother-in-law of the victim was also one of the accused of this case then how the minor girl was sent with her mother-in-law and she was not arrested by the police at the relevant time.

In view of the aforesaid discussion, it is clear that the learned C.J.M., Banka exceeded his jurisdiction and also over looked the mandate of law and has passed the order released dated 11.07.2019 without any jurisdiction hence, the same is null and void ab initio. The concerned I.O. of this case is directed bring the victim girl before this court on 23.09.2019. Let be a copy of this order is sent to the learned C.J.M., Banka to be careful in future.



In view of the aforesaid facts and circumstances of the case, I am not inclined to grant regular bail to the petitioner. It is, accordingly, rejected.

(Anjana Mishra, J)

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