

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.1246 of 2020

Arising Out of PS. Case No.-211 Year-2018 Thana- JAMALPUR District- Munger

CHOTU YADAV, S/o Ashok Yadav @ Ashok Kumar Yadav @ Ashok Kumar,
R/o village- Faridpur Faari, Keshopur, P.S.- Jamalpur, District.- Munger

... .. Petitioner/s

Versus

1. The State of Bihar
2. Payal Kumari (Prosecutrix/Victim), D/o Ashok Kumar Singh (Informant),
W/o Chotu Yadav (Under Judicial Custody through impugned order)
3. Ashok Kumar Singh (Informant), S/o Rambalak Singh R/o village-
Ramchanderpur, P.S.- Jamalpur, Distt.- Munger

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Yogesh Chandra Verma, Sr. Adv,
Miss. Nisha Singh, Adv, Sagar Suman, Adv.
For the Opposite Party/s : Mr.Binod Kumar, Adv

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 03-02-2020

Heard the parties.

This application has been filed under Section 482 of the Cr.P.C. for quashing the order dated 05.09.2019 passed by Additional District Judge 1st-cum Special Judge POCSO, Munger, in G.R. Case No. 2207 of 2018 arising out of Jamalpur P.S. Case No. 211 of 2018 dated 28.07.2018 instituted under Section 366 (A), 120 (B)/34 of I.P.C and section 8 and 12 of POCSO Act.

Informant has lodged an F.I.R. giving rise to Jamalpur P.S. Case No. 211 of 2018 on 28.07.2018 alleging



therein that his daughter on 27.07.2018 at 7:30 P.M., went out to purchase some grocery but thereafter did not return back and in spite of all efforts she could not be traced and suspected that Chotu Yadav (petitioner) has enticed her away in conspiracy with all of his family members and friends.

It is submitted on behalf of petitioner that the victim left her home willingly and out of her own volition due to torture committed by informant and thereafter solemnized marriage with petitioner.

Victim was produced before the court and her statement was recorded under Section 164 Cr.P.C on 07.08.2018 in which she has denied all allegations against the petitioner and admitted that she willingly accompanied petitioner and also solemnized marriage with him on 28.07.2018 in temple in Munger and declined to go with her parents and expressed her willingness to live with petitioner in her matrimonial home. She further stated that her father is a drunker and her step-mother does not take care of her. Her father has instituted a false case against petitioner.

Victim was examined by the medical board on 06.08.2018 which assessed her age to be 17-18 years. The victim has refused to go with her mother and father and her



parents also do not want to take her and court found that as the victim is minor, send her to 'Bal Kalyan Samittee, Munger' by its order dated 05.09.2019 which is impugned in this petition.

A Division Bench of this Court in the case of **Shobha Kumari Vs. the State of Bihar & Ors** reported in **2015(1) PLJR 603**, while dealing with the case of similar nature directed release of victim who was kept in a Remand Home by order of Court. While directing victim to be set at liberty the Division Bench has held in para 3 and 4 as follows:-

“3. Prelude to the present petition was the lodging of the first information report by Shiv Prasad Das, the father of the present petitioner, alleging that she had been taken or enticed away for the purposes of being married to any man by the accused persons named in the written report dated 02.06.2013. The above noted Sahebganj P.S.Case No.116 of 2013 was registered under Sections 366 and 366A IPC and the investigation was taken up. It appears that the investigating officer of the case produced the petitioner before the Sub Divisional Judicial Magistrate(West), Muzaffarpur (in short 'SDJM') on 13.06.2013 for the purposes of recording her statement under Section 164 Cr.P.C and further made a prayer that she may be directed to be medically examined. It appears from the order passed on 13.06.2013 in the above noted case by the SDJM that her statement was recorded and a petition was filed by the aunt of Sujeet Kumar Yadav on 14.06.2013 before the SDJM, for handing over the custody of the lady to her. Another petition was filed by the informant of the case, i.e., the father of the present petitioner for obtaining the custody of the petitioner in his favour. The learned SDJM heard both the sides and passed the order impugned on 14.06.2013 directing that it was not



conducive and justified to release the lady as per her own sweet-will rather it was necessary that she be confined in the After Care Home, Gaighat, Patna.

4. The contention on behalf of the petitioner was that the medical examination report of the petitioner which has been extracted by the learned Magistrate in his order indicated that the petitioner was aged in between 15-16 years. The age of the petitioner was stated by her father as 14 years. However, the lady while making her statement under Section 164 Cr.P.C. on the 13th day of June, 2013 claimed herself to be aged about 18 years. Submission was that the preponderance of probability was that the lady was aged somewhere around 18 years and as may appear from her statement recorded under Section 164 Cr.P.C she had friendly relationship with Sujeet Kumar Yadav and she left her parents' house out of her own free-will on 29.05.2013 to go with the said Sujeet Kumar Yadav to Motihari where she got herself married to him in a Durga temple situated near the Bus stand, Motihari. The lady stated that she had not been kidnapped or abducted by anyone. Submission was that the age of the petitioner was assessed by the Board of doctors on 13.06.2013, i.e., more than one and half years ago and that particular circumstance may also probabalize that the petitioner may be aged about 18 years if two years have to be added to the medically determined age as per the judgment of the Supreme Court in the case of Jaymala v. Home Commissioner, State of Jammu and Kashmir reported in AIR 1982 SC 1297. By placing the decision of this Court in Rukhsar Khatoon v. State of Bihar & Ors reported in 2011(3) PLJR 388, it has been contended that while delivering that particular order, the Division Bench of this Court had taken notice of the prevailing deplorable conditions in the After Care Homes or Remand Homes of Bihar as regards the custody of young ladies and had held that those were never safe places to authorize the custody of girls. Submission was that considering all these circumstances and further considering that the lady could



be aged 18 years or could be capable of taking her own decision, it was necessary that she be set at liberty.”

For the reasons as stated above, the order dated 05.09.2019 passed by Additional District Judge 1st-cum Special Judge POCSO, Munger, in G.R. Case No. 2207 of 2018 arising out of Jamalpur P.S. Case No. 211 of 2018 dated 28.07.2018, is set aside and the victim girl is directed to be released from the ‘Bal Kalyan Samittee, Munger’ and set free with liberty to her to go to any place of her choice.

(S. Kumar, J)

Rajiv/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.02.2020
Transmission Date	27.02.2020

