

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.51110 of 2021

Arising Out of PS. Case No.-45 Year-2020 Thana- AGION (GARHANI) District- Bhojpur

PRAMOD RAM @ PRAMOD KUMAR RAM Son of Lal Mohar Ram
Resident of Village - Gaura, P.S.- Agiaon, District - Bhojpur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ravi Ranjan, Adv.

For the Opposite Party/s : Mr. Anil Kumar, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 05-05-2022 Heard learned counsel for the petitioner and learned
A.P.P. for the State.

The petitioner has preferred this application under Section 482 of the Criminal Procedure Code seeking quashing of the order of dismissal of discharge petition dated 26.07.2021 filed by the petitioner under Section 227 of the Criminal Procedure Code, passed by the learned Additional Sessions Judge-VI, POCSO, Bhojpur at Ara in POCSO Case No. 16 of 2020 arising out of Agiaon P.S. Case No. 45 of 2020.

On the basis of statement of informant alleging therein that the petitioner has outraged her modesty and also clicked her photo and made it viral and on protest being made by her mother, the petitioner started quarreling, an F.I.R. being Agiaon P.S. Case No. 45 of 2020 came to be registered on 03.03.2020 under



Sections 341, 323, 354(B) and 504 of the Indian Penal Code and Section 8 of the POCSO Act and also Section 67(B) of the Information Technology Act.

Routine investigation followed by the police and statement of the witnesses came to be recorded and after completion of the investigation, the petitioner came to be charge-sheeted.

On the basis of charge-sheet, the learned court below proceeded to frame charges against the petitioner and the petitioner has filed an application under Section 227 of the Cr.PC. seeking his discharge from the charges as leveled in the charge-sheet.

However, learned court below after hearing the parties and considering the materials available on record, by the impugned order, was pleased to reject the application for discharge filed by the petitioner and fixed the case for charge.

I have perused the materials available on record and heard the learned counsel appearing for the petitioner and learned counsel appearing for the State at length.

From perusal of the record, it appears that the petitioner has confined his discharge petition to the extent of applicability of Section 8 of the POCSO Act and Section 67 of the I.T. Act in the case on the ground that the prosecutrix was not the minor at the time of occurrence on the basis of the report of



Medical Board of Sadar Hospital, Ara by which the doctor has assessed the age of prosecutrix/victim more than nineteen (19) years.

Since the question, which is required to be addressed in this case for the adjudication of the case, is whether the victim was minor at the time of occurrence or not, the learned counsel for the petitioner has submitted that the learned Magistrate has materially erred in observing that the prosecutrix was minor at the time of occurrence relying on the date of birth of prosecutrix mentioned at her Aadhar Card which is found mentioned as 19.03.2006 though there was contradiction in the opinion of medical Board and the date mentioned at Aadhar Card. However, learned Magistrate has erroneously, observed the age of the prosecutrix below the age of eighteen years and declared her minor and accordingly rejected the discharge petition filed by the petitioner. Learned counsel for the petitioner further submits that no evidence with respect to any of the offence under Section 67 I.T. Act is available on record for prosecution of the petitioner in the alleged occurrence. Therefore, he contends that the impugned order suffers from wrong appreciation of fact and deserves to be quashed.

On the other hand, learned Additional Public Prosecutor submits that the learned magistrate, on the basis of charge-sheet filed by the prosecution and considering the



material collected during investigation, has rightly taken cognizance against the petitioner and rightly rejected the discharge petition filed by the petitioner holding the prosecutrix minor. He further submits that order impugned does not require any interference of this Court as the same is based on material fact collected during the investigation.

Having heard and perused the materials available on record and the rival submission advanced by the parties, I am of the view that considering application under Section 482 Cr.PC., at the stage of discharge, the Courts are not required to go into the merits of allegations and evidence in detail as if conducting mini-trial. Undoubtedly, while considering the question of charge, the Court has power to travel and weigh the evidence for the limited purpose of finding out as to whether a *prima facie* case against the accused is made out or not. Here in the case, at hands, the petitioner is found guilty for the offence that he has outraged the modesty of the prosecutrix who is minor being the age of below eighteen. This fact has also been corroborated with the statement of the victim under Section 164 Cr.P.C., according to her, she is minor of 16 years, therefore, the learned court below after going through the material fact has found a *prima facie* case under Section 8 of the POCSO Act against the petitioner and, accordingly, rejected the application for discharge.

Regard being had to the facts and circumstances, as



aforesaid, this Court is of the view that the impugned order does not require any interference of this Court in exercise of powers conferred under Section 482 of the Cr.P.C. Hence, the application stands dismissed, accordingly.

(Rajesh Kumar Verma, J)

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