

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.21486 of 2023

Arising Out of PS. Case No.-15 Year-2022 Thana- MAHILA P.S. District- Nalanda

CHANDRADEEP KUMAR Son of Rajendra Prasad Resident of Badi Pahari,
P.S.- Sohsarai, District - Nalanda.

... .. Petitioner

Versus

1. The State of Bihar
2. X

... .. Opposite Parties

Appearance :

For the Petitioner	:	Mr. Sanjay Kumar, Advocate
		Mr. Akash Anand, Advocate
For the Opposite Party State:		Mr. Md. Fahimuddin, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 10-11-2023

The petitioner has mentioned the name of the victim in the cause title of this application, who is opposite party No.2. Let the name of the victim be marked by using whitener in the cause title of the application and let she be referred to as X, so as to conceal her identity.

2. This application has been filed under Section 482 of the CrPC seeking quashing of an order dated 30.01.2023 passed in Sessions Trial No. 478 of 2022 arising out of Mahila P.S. Case No. 15 of 2022 by the learned Additional Sessions Judge 1st, Bihar Sharif (Nalanda), whereby the learned court below has directed for adding Sections 4 and 6 of the Protection of Children from Sexual Offences Act (POCSO Act).



3. Mahila P.S. Case No. 15 of 2022 came to be registered for the offences punishable under Sections 376, 313, 341, 323, 504 read with 34 of the IPC and Section 3/4 of the Dowry Prohibition Act, whereupon cognizance was taken by the court below after submission of charge-sheet for the aforesaid sections of the IPC and the Dowry Prohibition Act on 04.08.2022.

4. It is the prosecution's case, in brief, that a written complaint was filed by the opposite party No.2 alleging, *inter alia*, that she was introduced to the petitioner in the year 2015 through one of her friends and on assurance to solemnize marriage, the petitioner established physical relationship because of which she became pregnant.

5. It transpires that the informant made an application before the court below on 20.10.2022 bringing on record her marks-sheet issued by the Bihar School Examination Board, wherein her date of birth has been shown to be 30.12.1998. The court below, taking into account the entry in the marks-sheet issued by the Bihar School Examination Board, has directed for inclusion of Sections 4 and 6 of the POCSO Act and has reached a conclusion by the impugned order dated 30.01.2023 that the case required consideration by the Special Court POCSO.



6. Learned counsel appearing on behalf of the petitioner has submitted that the entire prosecution's case is based on false assertions and lodging of the criminal case, based on the facts, which are purely in the nature of family dispute, is an abuse of the process of the court. The entire criminal proceeding is manifestly attended with malafide instituted with ulterior motive for wreaking vengeance on the petitioner with a view of spite him due to private and personal grudge. He has further submitted that the informant/opposite party No.2 has accepted in her statement under Section 164 of the CrPC that physical relationship between the petitioner and the opposite party No.2 were consensual, rather the same was result of lust of both young persons to enter into the world of happiness. Reliance has been placed by learned counsel for the petitioner on the Supreme Court's decision in case of ***State of Haryana v. Bhajan Lal*** (AIR 1992 SC 604), ***Inder Mohan Goswami v. State of Uttaranchal***, reported in (2007) 12 SCC 1 to contend that a criminal case should not be allowed to continue in such matters.

7. After having heard learned counsel for the petitioner and learned Additional Public Prosecutor representing the State, I am of the view that no interference is required by the Court, at this stage, exercising power under Section 482 of the CrPC. The



petitioner has not disputed his intimate and physical relationship with the opposite party No.2. The prosecution has brought on record the marks-sheet of opposite party No.2 in which her date of birth is shown as 30.12.1998. According to the said date of birth, her age, during the period of the alleged relationship between the petitioner and the opposite party No.2, was less than 18 years and, thus, it is the prosecution's case that she was a 'child' within the meaning of Section 2(1)(d) of the POCSO Act.

8. The materials brought on record by the prosecution before the court below do constitute offence punishable under the provision of the POCSO Act. For the said reason, the impugned order dated 30.01.2023 passed in Sessions Trial No. 478 of 2022 arising out of Mahila P.S. Case No. 15 of 2022 by the learned Additional Sessions Judge 1st, Biharsharif (Nalanda) cannot be said to be suffering from any legal infirmity.

9. Truthfulness or otherwise of the accusation made by opposite party No.2 should not be gone into by this Court on an application under Section 482 of the CrPC. The petitioner has remedy at appropriate stage before the court below, seized with the matter.

10. It is made clear that any observation made by this Court in the present order shall not be treated to be this Court's



opinion on the victim’s claim that she was a ‘child’ within the meaning of Section 2(1)(d) of the POCSO Act nor in respect of any other accusation. It is further made clear that the observations made in the present order are limited for the purpose of considering the petitioner’s challenge to the impugned order dated 30.01.2023 passed in Sessions Trial No. 478 of 2022 arising out of Mahila P.S. Case No. 15 of 2022 by the learned Additional Sessions Judge 1st, Biharsharif (Nalanda). No observations in the present order shall prejudice the petitioner’s case at any stage including the stage of framing of charge or subsequent stage.

11. I find no merit in this application, which is accordingly dismissed.

(Chakradhari Sharan Singh, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	16.10.2023
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