

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.849 of 2022

Arising Out of PS. Case No.-128 Year-2021 Thana- GAUNAHA District- West Champaran

1. DILIP PASWAN @ DILIP KUMAR SON OF RAMESH PASWAN
RESIDENT OF VILLAGE- BELSANDI, P.S.- GAUNAHA, DISTRICT-
WEST CHAMPARAN
2. DIPU PASWAN SON OF RAMESH PASWAN, BROTHER OF DILIP
PASWAN RESIDENT OF VILLAGE- BELSANDI, P.S.- GAUNAHA,
DISTRICT- WEST CHAMPARAN
3. BIRJA HAJRA SON OF LATE THAKURI HAJRA RESIDENT OF
VILLAGE- BELSANDI, P.S.- GAUNAHA, DISTRICT- WEST
CHAMPARAN
4. RAMESH PASWAN @ RAMESH HAJRA SON OF LATE DOMA HAJRA
RESIDENT OF VILLAGE- BELSANDI, P.S.- GAUNAHA, DISTRICT-
WEST CHAMPARAN
5. MALTI DEVI WIFE OF RAMESH PASWAN, MOTHER OF DILIP
PASWAN RESIDENT OF VILLAGE- BELSANDI, P.S.- GAUNAHA,
DISTRICT- WEST CHAMPARAN
6. CHAMPA DEVI WIFE OF DINESH PASWAN, AUNT OF DILIP
PASWAN RESIDENT OF VILLAGE- BELSANDI, P.S.- GAUNAHA,
DISTRICT- WEST CHAMPARAN
7. DINESH PASWAN @ DINESH HAZRA SON OF SHYAMLAL HAJRA
UNCLE OF DILIP PASWAN RESIDENT OF VILLAGE- BELSANDI,
P.S.- GAUNAHA, DISTRICT- WEST CHAMPARAN
8. SANTOSH HAJRA @ SANTOSH PASWAN SON OF LATE ASHOK
PASWAN RESIDENT OF VILLAGE- JAMHAULI, P.S.- GAUNAHA,
DISTRICT- WEST CHAMPARAN
9. DIMPLE KUMARI WIFE OF GHUTAN KUMAR PASWAN, SISTER OF
DILIP PASWAN RESIDENT OF VILLAGE- TUMKARIA, P.S.-
NARKATIAGANJ, DISTRICT- WEST CHAMPARAN

... .. Petitioner/s

Versus

1. STATE OF BIHR THROUGH THE SECRETARY, HOME DEPARTMENT,
GOVT. OF BIHAR, PATNA BIHAR
2. SENIOR SUPERINTENDENT OF POLICE, WEST CHAMPARAN
DISTRICT, BETTIAH BIHAR
3. OFFICER IN CHARGE, GAUNAHA P.S., DISTRICT WEST
CHAMPARAN BIHAR
4. GITA DEVI WIFE OF JITENDRA DIXIT R/O VILLAGE- DHANAV, P.S.-
BANIYAPUR, DISTRICT- CHAPRA

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.K.M.Joseph
For the Respondent/s	:	Mr. Iqbal Asif Niazi, A.C. to G.P.-5
For the O.P. No. 2	:	MsNamrata Mishra
		Mr. Archana Jha

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR



ORAL ORDER

6 29-04-2024 Heard the parties.

2. The petitioner has prayed for following reliefs:-

“i. To direct the State Respondents to take immediate and appropriate steps to search for, find and secure the life of Sonali Kumari, the wedded wife of the writ petitioner no. 1 with child born to her after she was given into custody and care of her mother by the Court below on 25.08.2021, as their lives are in danger and to produce her and her child before the Court below and/or into the custody and care of her husband Dilip Kumar Paswan, petitioner no. 1 herein.

ii. To quash order dated 17.12.2021 (Annexure 12) passed by the Learned Additional District cum Sessions Judge VII cum Special Judge (POCSO) Bettiah in Gaunaha P.S. Case No 128 of 2021 taking cognizance against the petitioners u/s 366A I.P.C. and Section 8 of the POCSO Act as being without due application of mind to the evidence on record and is bad in law and on facts.”

3. Learned counsel for the petitioners submits that Gaunaha P.S, case no-128/2021 was instituted on the basis of a complaint letter signed by one Geeta Devi wife of Jitendra Dixit the informant submitted to the officer in charge Gaunaha P.S on 06.07.2021 alleging therein commission of the offences against the complainant and others named in the complaint.

4. According to the F.I.R., the case against the petitioners - named accused, is as follows: -



i. The informant Geeta Devi, wife of Jitendra Dixit of village Dhanav, P.S. Baniyapur in District Chapra, was at the relevant time residing in Gujarat with her family, and had two sons and two daughters. In the room next to informant's room some labourers were living, who used to visit her room.

ii. The informant had come to her village at Chapra with her family for the Bihar Board Examinations of her daughter.

iii. After completion of the examinations, Sonali Dixit did not return back home, but by phone from mobile no.8294861837 informed that she is going to a friend's home and will return by evening, but she did not return as promised.

iv. It was claimed by the informant that on her repeated call on above phone number the call was answered by her daughter who told the informant that she had been forcibly taken by Dilip Kumar to his village Balsandi under Gaunaha police station.

v. It was further stated by the informant on receiving the information on 13.06.2021 reached house of Dilip Paswan son of Ramesh Paswan at village Balsandi and wanted to take her daughter back with her but the relatives of Dilip Paswan present beat her and hit her with bricks causing injury.



Thereafter, the informant returned to her home after giving a complaint at the Gaunaha police station (giving rise to Gaunaha P.S. Case No. 117 of 2021 dated 13.06.2021 instituted u/s 341/323/354 (B)/504/506/34 I.P.C.).

vi. It was further claimed by informant that she again went to village Balsandi on 3/07/2021 but could not meet her daughter and suspecting that her daughter had been kidnapped with intent to marry. The informant has further stated in the complaint that age of her daughter is 17 years and that her life is in danger.

vii. On the basis of averments made in the complaint by informant, the Gaunaha P.S. Case No. 128 of 2021 was instituted by the police u/s 366A I.P.C. and section 8 of the POCSO Act against the accused persons, namely: -

1. Dilip Kumar son of Ramesh Paswan,
2. Dipu Paswan brother of Dilip Paswan
3. Brija Hazra,
4. Ramesh Paswan father of Dilip Paswan
5. Mother of Dilip Paswan.
6. Sister of Dilip Paswan,
7. Uncle of Dilip Paswan
8. Aunt of Dilip Paswan



all residents of village Belsandi and

9. Santosh Hazra of Chandoli, son-in law of Brija Hazra.

5. Learned counsel for the petitioners further submits that the petitioners are wholly innocent of the offences alleged against them and the Gaunaha P.S. Case No. 128 of 2021 u/s 366A 1.P.C. and section 8 of POCSO Act dated 06.07.2021 has been instituted against them after a long delay of nearly five months from the date the alleged elopement/ kidnapping at the completion of the Bihar Board class XII examinations 2021 (which ended on 13.02.2021 vide schedule) and more than 4 months after the marriage between Dilip Kumar, petitioner no. 1 and Sonali Kumari, daughter of informant was solemnized before witnesses on 06.03.2021 at Durga Devi Temple at Bettiah. The case has been instituted on false, fabricated and baseless allegations made by the informant under instigation from her relatives who disapproved of the inter-caste marriage of the petitioner Dilip Paswan with informant's daughter Sonali Dixit.

6. It is also submitted that the petitioner who is aged about 23 years married Sonali Kumari D/o Jitendra Dixit, then aged 18 years and 10 months, at Durga Devi Temple (situated



near M.J.K. College, Bettiah in West Champaran District) on 06.03.2021 according to Hindu custom before the Pujari of the temple who has duly certified to their marriage.

7. Learned counsel has submitted that no case against the petitioners under Section 366A and Section 8 of the POCSO Act is made out as Dilip Paswan was aged about 23 years and Sonali Dixit (DB 06.05.2002) was aged above 18 years on 06.03.2021, the date of their marriage at Durga Devi Temple at Bettiah in the presence of witnesses.

8. He has submitted that the Matriculation Certificate of Sonali Kumari with records the date of birth of Sonali Kumari daughter of Jitender Dixit as 06.05.2002 is in the custody of Gita Devi, the mother of Sonali Kumari and is not available to the petitioner. However, the Headmaster of Shivrindan Baldev High School Dhanav, Baniyapur, Saran, the Secondary School where Sonali was admitted for secondary education and completed her secondary education, has certified that as per the admission register in the school, the date of birth of Sonali Kumari daughter of Jitender Dixit is recorded as 06.05.2002. Further the Secondary School Examination 2019 results published by Bihar School Examination Board records the date of Birth of Sonali Kumari daughter of Gita Devi and



Jitendra Dixit as 06.05.2002.

9. It is next submitted that the informant in the information / complaint letter dated 06.07.2021 falsely and with *mala fide* intention stated that her daughter Sonali is 17 years old without any supporting evidence at the time and thereafter false and fabricated evidence by altering/ changing entries in Aadhaar card, and thereby had the case instituted under Section 366A IPC and under provisions of POSCO Act against the petitioner and his family members and relatives. The Informant is liable to be prosecuted for malicious prosecution of the case.

10. Learned counsel for the petitioner argued that Sonali Kumari, who was pregnant with child, on coming to know that Dilip Kumar Paswan her husband has been falsely implicated in a case u/s 366A IPC and Section 8 of POCSO Act accompanied by her husband came to Bettiah on 12.07.2021 and had herself got medically examined and also swore an affidavit before the Notary public bringing on record that she had married Dilip Kumar Paswan of her own accord with the consent of her parents and she is peacefully living with her husband at Belsandi and is an expectant mother.

11. On 16.08.2021, Sonali Kumari, was intercepted



and detained in a shelter home in Bettiah by S.H.O., Gaunaha P.S. on 16.08.2021 while on her way to the Special Court in Bettiah to appear in Court in connection with Gaunaha P.S. Case No. 128 of 2021 to make statements of facts in support/ defense of her husband, accused in the case, carrying with her a copy of her sworn affidavit and a medical certificate dated 12.07.2021 showing her age to be 20 years at the state of her pregnancy. Sonali was detained at shelter home at Bettiah under custody of her mother, the informant in the case.

12. It is submitted on behalf of the petitioners that Sonali Kumari was produced by prosecution before the Additional District Judge VII cum Special Court (POCSO) Bettiah, West Champaran on 17.08.2021 and submitted that she is above 18 years and out of her own will married Dilip Kumar Paswan, her husband. The Court below directed the petitioners to have her statements recorded under Section 164 of the Cr.P.C.

13. It is also submitted that the statement of the petitioner was recorded by the Magistrate not under Section 164 Cr.P.C. as directed by the Special Judge, but under Section 26 of POCSO Act in the presence of her mother, the informant in the case. In her statement she clearly stated that she out of her own will and after long period of mutual contact Voluntarily



married Dilip Kumar, Petitioner no. 1 herein, and he and all her relatives were innocent. Her age was recorded as 17 years on the basis of her modified Aadhar Card produced by her mother. The informant also under false conditional promise of withdrawal of all cases against her husband and relatives persuaded her to agree for going with her to her parents' home.

14. He submitted that the circumstances, inducements and compulsions under which her statements were recorded by the Judicial Magistrate was written down in her own hand by Sonali Kumari and sent to her uncle (*phupha*) by an undated and unsigned communication received by her uncle.

15. Learned counsel for the petitioner submitted that the Investigating Officer in order to ascertain the actual age of the victim Sonali Kumari forwarded her under police custody to M.J.K. Medical College Bettiah on 23.08.2021. The Medical Board constituted after due investigation certified its opinion that Sonali Kumari was aged between 19 and 20, nearer to 20 years.

16. It is submitted that further to ascertain the age of the victim beyond doubt the Investigating Officer on 24.08.2021 visited the Shivrindan Baldev High school Dhanav, Baniyapur



in Saran district where Sonali had her secondary education and the headmaster of the school on the basis of the admission register maintained in the school certified the date of birth of Sonali Kumari, daughter of Jitendra Dixit to be 06.05.2002.

17. He submits that the Police on 20.11.2021 after investigation submitted final form in the case stating that according to the evidence collected under Section 161 of Cr.P.C. during investigation the case appear 'mistake of fact' (तथ्य की भूल).

18. He lastly submitted that the Additional District cum Sessions Judge VII cum Special Judge (POCSO), Bettiah wholly ignoring the contents of the police report and evidence in the case diary showing that Sonali Kumai, the alleged victim in the case was above 18 years old at the time of her alleged elopement and marriage to petitioner of her own free will and therefore no case under section 366A of I.P.C. and/or section 8 of POCSO Act could be made out against any of the accused persons, and without giving any reason for its disagreement with the conclusion arrived at by the police in its report and for rejection of the police report, by its order dated 17.12.2021 took cognizance against all the accused persons u/s 366A I.P.C. and Section 8 of POCSO Act and issued process and has since



issued warrants and taken other coercive steps against the respondents wholly ignoring the evidence on record.

19. The petitioners have challenged the order taking cognizance by filing this writ application.

20. Learned Magistrate on the basis of the materials available on record has differed with the final form and has taken cognizance against the petitioners under Sections 366A I.P.C. and Section 8 of the POCSO Act.

21. Learned counsel for the petitioners Mr. K.M. Joseph wants this Court to hold a mini trial, come to a finding that the alleged victim girl was a major and not a minor as has been found by the court below and wants the quashing of the order taking cognizance.

22. When the facts are disputed and a *prima facie* case has been found by the magistrate, this Court will not interfere in the impugned order.

23. This application is dismissed with liberty to the petitioners to approach the Court below at the stage of framing of charge for discharge.

(Sandeep Kumar, J)

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