

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.56823 of 2023

Arising Out of PS. Case No.-215 Year-2021 Thana- PUPRI District- Sitamarhi

MD. AASIF SON OF MD. ZAHIR AHMAD RESIDENT OF VILLAGE
YAHYAPUR WARD NO 13, PS PUPRI, DIST- SITAMARHI

... .. Petitioner/s

Versus

1. The State of Bihar
2. MUSARRAT JAHAN WIFE OF NEYAZ AHAMAD RESIDENT OF
VILLAGE- YAHYAPUR, WARD NO. 13, PS- PUPRI, DIST-
SITAMARHI

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ansul, Adv.

Mr. Sanjay Kumar, Adv.

For the Opposite Party/s : Mr. Chandra Bhushan Prasad, APP

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

2 18-01-2024 1. Heard the learned counsel for the petitioner and the
learned APP for the State.

2. The learned counsel for the petitioner submits that
the present quashing application has been filed seeking quashing
of the order dated 05.07.2023 passed by the learned A.D.J.-VI-
cum-Special Judge, Sitamarhi in connection with Pupri P.S.
Case No.215/2021, whereby cognizance of offence under
Sections 354(D), 509, 506 and 34 of the Indian Penal Code read
with Section 12 of the POCSO Act has been taken. The learned
counsel for the petitioner submits that Pupri P.S. Case
No.215/2021 was instituted by the mother of the victim, who is
a minor alleging therein that the petitioner herein along with one



Md. Seraj was torturing her daughter by calling her on her mobile number as detailed in the F.I.R. and even used to tell her to leave her home and to flee, on which the minor informed the informant that the petitioner along with another accused even commit objectionable act in a mango orchard near her house and forces the minor to establish physical relation. It is also alleged that on 06.06.2021 at about 10.00 P.M. in the night, the petitioner came to her house and forced the victim to accompany him but fled when the informant abused him.

3. The learned counsel submits that the petitioner has been falsely implicated in the present case. It is next submitted that the police after investigation submitted final form exonerating the petitioner of the allegation as alleged in the F.I.R. but in a mechanical manner cognizance came to be taken which was challenged before this Court by filing Cr. Misc. No.26405/2022. It is submitted that Cr. Misc. No.26405/2022 was allowed by an order dated 23.02.2023 and the order taking cognizance dated 17.12.2021 was set aside and the matter was remanded back to the learned A.D.J.-VI-cum-Special Judge, POCSO Act for proceeding in accordance with law. The learned counsel next submits that on remand, the learned A.D.J.-VI-cum-Special Judge, POCSO again in a mechanical manner



proceeded to take cognizance of offences under Sections 354(D), 509, 506 and 34 of the Indian Penal Code read with Section 12 of the POCSO Act. It is also submitted that the learned A.D.J.-VI-cum-Special Judge, POCSO Act even relied on para-21 of the case diary, while taking cognizance which is the supervision report of the Dy. S.P., it is thus submitted that taking cognizance by relying on supervision note in itself render the order taking cognizance vulnerable.

4. The learned APP Mr. Chandra Bhushan Prasad vehemently rebut the submissions of the learned counsel for the petitioner and submits that what is not disputed rather stands admitted is that an F.I.R. came to be instituted against the petitioner and that too by the mother of a minor victim. It is next submitted that no mother would instituted a false F.I.R. implicating an innocent person with an allegation that he was behaving inappropriately with her daughter as the said allegation would definitely bring disrepute to the family and to the victim, it is next submitted that it appears that when the mother and the minor victim got fed up of the act of the petitioner then the present F.I.R. came to be instituted and this aspect cannot be ignored, it is further submitted that the F.I.R. also discloses that the minor had disclosed to her mother that



how the petitioner along with another accused used to act inappropriately in a mango orchard which was near her house and even used to entice the victim for fleeing from home. The learned APP further submits that no doubt the supervision report ought not to have been taken into consideration by the learned trial court while taking cognizance but then it is a mere irregularity and not an illegality as the order of cognizance also record that the statement of the victim as recorded at para-5 of the case diary was also taken into consideration along with CDR of the victim and the accused. The learned APP thus submits that if the Court at this stage interferes with the order of cognizance that definitely would give impetus to the person like petitioner to commit such offence with impunity.

5. Considering the submissions made by the learned APP, the Court is not inclined to entertain the quashing application.

6. The quashing application is accordingly rejected.

(Satyavrat Verma, J)

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