

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1445 of 2022

Arising Out of PS. Case No.-219 Year-2019 Thana- DARBHANGA District- Darbhanga

ANGELA LEE HICKS W/O JEFFREY DELANE HICKS Permanent address at resident of 5410, 18th Avenue North, Saint Petersburg, Florid 33710, United States of America and Having Local Address at Flat No. 332, 2nd Floor, Block 3, Barsana Garden Apts, Khaprail Road, Matigara, Siliguri, West Begal, 734010. Mother of the Victim minor girl.

... .. Petitioner/s

Versus

1. The State of Bihar
2. THE DISTRICT MAGISTRATE, DARBHANGA. Bihar
3. THE SUPERINTENDENT OF POLICE, DARBHANGA. Bihar
4. THE OFFICER IN-CHARGE, TOWN POLICE STATION, DARBHANGA. Bihar
5. THE INVESTIGATING OFFICER, TOWN, P.S CASE NO.- 219 of 2019 DATED 12-10-2019 Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Ms. Riya Giri Mr. Ashish Giri Mr. Sumit Kr. Jha
For the Respondent/s	:	Mr. Iqbal Asif Niazi, AC to GP-5

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

3 29-04-2024 Heard learned counsel for the petitioner and learned
counsel appearing on behalf of the State.

2. The prayer of the petitioner reads as follows:-

“(i) To hold and declare that from the material collected during the course of investigation containing the statement of the witnesses including the present petitioner as well as the statement of the victim under Section 164 Cr.P.C., the offense under Section 376 I.P.C. and Section 3 to 12 of Protection of Children from Sexual Offences Act, 2012 are made out and accordingly the investigating Officer has wrongly excluded such offences while submitting the charge sheet and as such the prosecution



ought to be initiated for the said offences as well arising out of Town P.S. Case No. 219 of 2019 dated 12.09.2019.

(ii) To accordingly direct the the Court of Special Judge, POCSO, Darbhanga to pass appropriate orders on the protest petition filed by the Petitioner dated 03.03.2022 opposing non-inclusion of the offences of committing rape of the Minor victim Girl under section 376 I.P.C. as well as offences of penetrative sexual assault, sexual assault etc. under the provisions of Section 3 to 12 of the Protection of Children from Sexual Offences Act, 2012 in the charge sheet submitted by the Investigating Officer dated 07.02.2021 and accordingly to take cognizance of the said offences.

(iii) To issue appropriate order in the nature of mandamus directing for institution of case against the erring investigating officer of the present case of Town P.S. Case No. 219 of 2019 dated 12.09.2019 in light of Section 21 read with Section 19 of the Protection of Children from Sexual Offences Act, 2012 as the said officer/officers have failed to record the offences of sexual assault harassment, penetrative sexual assault as provided under the provisions of Protection of Children from Sexual Offences Act, 2012 which was apparent from the written information given to the said Investigating Officer itself.

(iv) To hold and declare that the entire investigation has not been conducted in fair and proper manner and is contrary to the provisions of the Cr.P.C. read with POCSO Act and accordingly the charge sheet submitted without incorporating the provision of offences under the POCSO Act is not fit to be accepted and alternatively fresh investigation be directed to be taken up by an independent agency.

(v) To hold and declare that there has been complete injustice and violation of the provisions of Criminal Procedure Code as well as the POCSO Act from



investigation stage up-till now and the trial therefore before the Court of Darbhanga is not likely to be a fair trial and as such the entire case be transferred to the Special Court under the POCSO Act in Patna.

(vi) To direct the Learned Trial Court for concluding the trial of the case strictly following the procedure prescribed under the POCSO Act and especially Section 33 therein read with Sections 35, 36, 37 and other relevant provisions and to conclude the trial within one year from the date of taking cognizance of the offences as mandated under Section 35(2) therein.”

3. It has been submitted by the learned counsel for the State that the cognizance has been taken under Section 376 of the Indian Penal Code and the various provisions of the POCSO Act, 2012 and therefore, this application has become infructuous.

4. This application is disposed of with a direction that if the charges have been framed in the sessions trial, the trial court will conclude the trial at the earliest preferably within one year.

(Sandeep Kumar, J)

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