

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.185 of 2022

Arising Out of PS. Case No.-590 Year-2018 Thana- SIWAN CITY District- Siwan

Dr. Chhabila Rawat Son of Late Devadhari Rawat Resident of Village-
Panchmandira, P.S.- Siwan Town, District- Siwan, Bihar

... .. Petitioner/s

Versus

1. The State of Bihar
2. Rehan Ashiq Son of Pappu Miskar Resident of Village- Makhdoom Sarai,
P.S.- Siwan Town (Sarai O.P.), District- Siwan, Bihar.
3. Pappu Miskar @ Imteyaz Ahmad Son of Mumtaz Resident of Village-
Makhdoom Sarai, P.S.- Siwan Town (Sarai O.P.), District- Siwan, Bihar.
4. Bikki Kumar @ Rahul Son of Birju Chaudhary Resident of Village-
Makhdoom Sarai, P.S.- Siwan Town (Sarai O.P.), District- Siwan, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Prashant Kumar, Adv.
For the State	:	Mr.Aditya Narayan Singh.1, A.P.P.
For the O.P. No.2-4	:	Mr. Ajay Kumar Tiwary, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 19-08-2025

Heard learned counsels for the parties.

2. The present criminal revision petition has been filed against the order dated 04.12.2021 passed by learned Special Judge, POCSO, Siwan in POCSO Trial No. 109 of 2019 whereby and whereunder the application dated 16.08.2019 filed on behalf of the prosecution has been rejected.

3. Learned counsel for the revisionist submits that the revisionist is the informant before the learned trial court and the case has been registered against the opposite party nos. 2-4

under Section 363A, 366A/34 of the Indian Penal Code and Section 4/8 of the POCSO Act, 2012. Subsequently, charge sheet has been submitted under Section 363A, 366A, 354D, 376AB/34 of the Indian Penal Code and Section 4/6 of the POCSO Act and cognizance has been taken under Section 363A, 366A, 354D, 376AB/34 of the Indian Penal Code and Section 4/6/ 8 of the POCSO Act.

4. However, the charges have been framed under Section 363, 366A, 354D of the Indian Penal Code and Section 4/8 of the POCSO Act. Learned counsel further submits that during investigation the age of the victim was found to be below 16 years and the application was filed on behalf of the prosecution for alteration of the charge and for framing the charges under Section 376(3)/34 of the Indian Penal Code against the accused persons but the learned trial court on a completely *non est* ground rejected the application filed by the prosecution for alteration of charges holding that almost all prosecution witnesses have been examined and record is at the verge of disposal and considering the belated stage, the application of the prosecution was rejected.

Learned counsel further submits that it is the settled position of law that charges can be altered under Section 216 of

the Code of Criminal Procedure at any time before the judgment is pronounced. The learned trial court has not considered this aspect of the matter and the summarily rejected the application for alteration of charge without adverting to the merits of the case. Learned counsel further submits that the present matter is covered by the judgment of this Court in the case of ***The State of Bihar Vs. Md. Shahabuddin and Ors.*** reported in **2013 (1) PLJR 524**, paragraph no. 19, *inter alia* reads as under:-

"19. This Court is of the considered opinion that while exercising revisional jurisdiction, the court should normally refrain from reappraising or reappreciating the evidence/materials available on the record for coming to a different conclusion than that of the learned trial court. Sufficiency or otherwise of the materials for addition of charges against the accused persons is required to be necessarily decided first by the learned trial court and not by the revisional court. This Court finds that in the present case, while passing the impugned order, the learned trial court has not at all discussed or considered the evidence/materials available on the record, as claimed by the prosecution, for coming to a conclusion about the sufficiency or otherwise of the materials for addition of charges against the accused opposite parties. Therefore, it may not be prudent for this Court to issue any specific direction at this stage to the trial court for addition of charges against the accused opposite parties particularly in the background that the learned trial court has not applied its judicial mind to the facts of the case, yet, it rejected the prayer made on behalf of the prosecution merely on the ground of delay in approaching the court, which has already been held by this Court in earlier part of this order to be not sustainable in the eye of law. However, this Court is of the opinion that once a

prayer was made on behalf of the prosecution for addition of charges against the accused opposite parties, the learned trial court ought to have applied its judicial mind to the facts of the case and ought to have considered the evidence of material witnesses, referred to by the prosecution, for coming to a conclusion as to whether there are sufficient materials available on the record or not for addition of the charges against the accused opposite parties. But, admittedly, that has not been done in the present case, which makes the impugned order vulnerable."

Thus, learned counsel submits that the learned trial court was supposed to apply its judicial mind to the facts of the case for coming to a conclusion as to whether there was sufficient material available on record or not for addition of charges on the accused persons. Since learned trial court failed to apply its judicial mind in the facts and circumstances of the case, the impugned order is not sustainable as it is an illegal order.

5. Learned counsel appearing on behalf of the opposite party nos. 2-4 vehemently contends that there is no infirmity in the impugned order and the same is just and proper. Learned counsel further submits that after submission of charge sheet under Section 363A, 366A, 354D, 376AB/34 of the Indian Penal Code and Section 4/6 of the POCSO Act, cognizance was also taken for the same section and doctor has been examined as one of the witnesses. From the deposition of the doctor it

appears that no case under Section 376(3)/34 of the Indian Penal Code is made out as the doctor has not found any injury of sexual assault. Learned counsel further submits that taking into consideration these facts, the learned trial court rejected the application and there is no infirmity in the impugned order.

6. Perused the record.

7. Having regard to the rival submission of the parties and perusal of record, the operative part of the impugned order shows that the learned trial court did not enter into the merits of the case at all and did not consider what were the facts on which the alteration of charge or addition of charge was sought on behalf of the prosecution. The application dated 16.08.2019 has been rejected merely on the ground that it was filed at a quite belated stage but the same fact flies on the face of record since the order sheet dated 22.10.2019 shows when the application was filed, the learned trial court directed the prosecution to adduce its evidence and also observed that the application dated 16.08.2019 would be considered after recording of the evidence. If the learned trial court has already made such an observation, it was not proper for it to subsequently say that the application for alteration of charge has been filed at a belated stage. Moreover, non-consideration of the facts and its appraisal for

considering the application under Section 216 of the Code of Criminal Procedure makes the order unsustainable and liable to interference by this Court.

8. Accordingly, finding that the order dated 04.12.2021 passed by the learned trial court suffers from illegality, the same is set aside and the learned trial court is directed to pass an order afresh on the application dated 16.08.2019 filed by the prosecution.

9. Accordingly, the present criminal revision petition stands allowed.

(Arun Kumar Jha, J)

Anuradha/-

AFR/NAFR	NAFR
CAV DATE	N/A
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