

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2482 of 2024

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

Angela Lee Hicks W/O Jeffrey Delane Hicks Mother of the Victim Minor Girl, R/O 5410, 18th Avenue North, Saint Petersburg, Florid 33710, United States of America.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Home Department, Government of Bihar, Patna. Bihar
2. The Principal Secretary, Home Department, Government of Bihar, Patna. Bihar
3. Raman Kumar @ Chaman Son of Sri Moti Mandal Resident of New Colony, Shubhankarpu, P.S.- town Darbhanga, P.O.- Shubhankarpu, Distt.- Darbhanga, Bihar-846006

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Ms. Riya Giri, Advocate Mr. Shashank Shekhar Dubey, Advocate Mr. Sumit Kr. Jha, Advocate
For the Respondent No. 3	:	Mr. Kaushalesh Choudhary, Advocate
For the State	:	Mr. Vipin Kumar, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

6 17-02-2025 The minor girl, being a foreign national, established some sort of acquaintance with a young boy of this country who turned out to be an accused in a case under the POCSO Act. At the outset, perusals of records reveal the manner in which the case was treated by the police authority. The lethargic or lackadaisical approach from the very beginning to register the FIR, conducting investigation and finally submission of charge-sheet, *prima facie* suggest that the role of the police authority in the instant matter tarnished the image of our country where



protection of justice, social, political and economic was granted in the preamble of the Constitution.

2. While hearing the instant writ petition, a question came up in the mind of the Court as to whether a criminal writ petition is maintainable challenging a judicial order passed by the learned Special Judge, POCSO, rejecting the *de facto* complainant's application to accept Facebook messages sent by the accused either to the victim or her parents under Section 65B of the Indian Evidence Act.

3. It would not be out of place to mention as a background of the case that the victim was aged about 13 years, being born in Mussoorie, India, on 28th June 2003 at the time of commission of offence. Initially, in the year 2018, the mother of the victim noticed that she was stalked and sexually abused by the accused. She tried to lodge a complaint in the jurisdictional Mahilla P.S., but her complaint was not accepted. Subsequently, on 12.09.2019, the police attached to Darbhanga Town P.S. registered P.S. Case No. 219 of 2019 against the accused under Section 354A/354D/504 and 506 of the IPC. No penal provision of the POCSO Act was added. Even during the investigation, the investigating officer did not want to record the victim's statement under Section 164 of the CrPC. The mother of the



victim approached this Court in Cr. WJC 343 of 2020, which was disposed of on 23rd June 2020, directing the Judicial Magistrate 1st Class at Darbhanga to record the statement of the victim under Section 164 of the CrPC by video conferencing.

4. After submission of the charge sheet, a protest petition has been filed on behalf of the *de facto* complainant, stating, *inter alia*, that the accused himself confessed in his Facebook messages that he had indulged in sexual intercourse with the prosecutrix while she was residing in Darbhanga, and relevant documents were given to the I.O. The informant of the case visited the concerned P.S. time and again and approached the police officer to consider the electronic messages and communications sent by the accused either to the victim or to her parents, but the police submitted the charge sheet in a very casual manner without collecting substantial evidence which could corroborate the statement of the prosecutrix and the informant. Therefore, the applicant/protester apprehended that she would not get proper justice from the court in India.

5. The woe of the victim and her family members did not end here. Even after filing of the charge-sheet, the learned Chief Judicial Magistrate, Darbhanga did not take cognizance of the offence on the basis of the charge-sheet. This prompted the



writ petitioner to file the second writ petition, i.e., Cr. WJC 1445 of 2022 before this Court. A co-ordinate bench of this Court vide order dated 22nd December 2022, directed the learned Chief Judicial Magistrate, Darbhanga to submit a report showing as to why despite submission of charge-sheet on 07th February 2021, order of cognizance was not passed. In the said writ petition, a counter-affidavit was filed on behalf of the Superintendent of Police, Darbhanga, and the SHO of Town P.S., Darbhanga, stating, *inter alia*, that the investigating officer was directed to take the following steps for proper investigation of the case:

“(i) To recover the mobile of the accused the mobile phone of the accused and the C.D.R. of the sim filled in it and the details of the message made from mobile, be mentioned in the case diary.

(ii) Take necessary action to record statement of victim girl through video conferencing.

(iii) Take the statements of other independent witnesses and mention in case diary.

(iv) After complying with the instructions submit the updated case diary.”

6. The investigating officer did not care to take such a step during the investigation. Amongst the directions quoted



above, at the risk of repetition above, let me state that the investigating officer was directed to recover the mobile of the accused and the C.D.R. of the SIM filled in it and the details of the message made from the mobile and keep the same in the case diary. If the said step was taken by the investigating officer, he could issue notice to the victim and her parents to produce the SIM card, mobile, and other computer devices, etc.; take the data from the said devices in the computer hard disk, C.D., or pen drive; and get it examined scientifically and obtain a certificate under Section 65B of the Indian Evidence Act. When the investigating officer, in spite of such directions, failed to do so, the father of the victim filed an application along with a certificate under Section 65B of the Indian Evidence Act, placing the Facebook, WhatsApp, and text messages sent by the accused from his mobile phone either to the mobile phone or laptop of the parents of the victim as well as the victim. The learned Special Judge was not agreeable to accept the said documents along with the certificate as secondary evidence on the ground that the original device has not been placed before the court.

7. The applicant was compelled to obtain the certificate under Section 65B from the Cyber Evidence Archival



Center in respect of the said messages obtained from original devices and filed the copies of the messages along with the certificate in the trial court.

8. Be that as it may. This Court is of the view that the messages sent by the accused through computer devices like mobile phones, laptops, etc., are important documents in order to come to a logical conclusion of the case; therefore, this Court is inclined to pass an order in the instant writ petition in order to protect the life and liberty of a minor girl and also to protect the impartiality of the Indian judicial system, though this Court is not unmindful to note that generally a writ petition does not lie against an order passed by a court of law on the judicial side. This Court has also inherent power under Section 482 of the CrPC to pass any order to protect abuse of the process of the court. In the instant case, the impugned orders are glaring instances of abuse of the process of the Court. For adjudication of a charge of sexual abuse upon a minor girl, the Court must be proactive and inquisitive in nature to find out the real culprit. The process is more of a quest for a truth than a mechanical abduction.

9. For the reasons stated above, the learned Special Judge, POCSO Act, Darbhanga, is directed to allow the



applicant to produce the computer devices before the court after fixing a specific date and informing the same to the petitioner well in advance. The trial court shall arrange for an expert with the help of the SHO, Darbhanga P.S., who will obtain the copy of the messages in court and send the same for a scientific report. The report must come within one month from the date of departure of the messages and follow the procedure under Section 65B of the Indian Evidence Act. The learned trial judge is at liberty to make those messages exhibits.

(Bibek Chaudhuri, J)

Suraj Dubey/-

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