

(2019) 12 JH CK 0121

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petitions No. 694 Of 2019

Abhimanyu Bhardwaj

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 09-12-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 323, 338, 341, 354A, 504
Protection Of Children from Sexual Offences (POCSO) Act, 2012 — Section 8, 12
Code Of Criminal Procedure, 1973 — Section 164, 190, 204

Citation : (2019) 12 JH CK 0121

Hon'ble Judges : Ananda Sen, J

Bench : Single Bench

Advocate : R.S.Mazumdar

Judgement

1. By filing this interlocutory application, prayer has been made to add the order dated 22.12.2018 as the order impugned because the same is a consequential and corrective order of the order taking cognizance dated 24.09.2018.

Considering the submission, prayer made in the interlocutory application is allowed. Let this interlocutory application be treated as a part of the main writ application.

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Heard learned senior counsel for the petitioners and the learned A.P.P. for the State.

2. In this application, the petitioners have challenged the order dated 24.09.2018, passed by the Additional District & Sessions Judge-1st,-cum-Special Judge, POCSO, Dhanbad, by which cognizance of the offence under Sections 341, 323, 338, 354A, 504/34 of the Indian Penal Code and Sections 8 &

12 of POCSO Act, has been taken and thereafter, summons have been issued against these two petitioners for appearance.

3. Learned senior counsel appearing for the petitioners submits that from the bare perusal of the order taking cognizance it will appear that without

applying mind, the impugned order has been passed. He submits that the court has stated in the order dated 24.09.2018 that after going through the

statement recorded under Sections 164 Cr.P.C. of the victim girl and other materials, i.e. FIR and the statement of the witnesses in the charge sheet,

cognizance of offence has been taken. He submits that there is no statement of the victim girl recorded under Section 164 Cr.P.C. in the case diary as

the statement of the victim was never recorded under Section 164 Cr.P.C. He submits that in the order dated 24.09.2018, the Court has written that

he has gone through the records, but in fact, he has not gone through the records.

He submits that thereafter, the petitioners filed a petition intimating the Court that there is no statement under Sections 164 Cr.P.C. of the victim girl

on record and the same needs be corrected. He submits that the Court thereafter, vide order dated 22.12.2018 took note of the aforesaid petition and

submission of the lawyer and in the 3rd last paragraph ordered that the statement of the victim is not recorded under Section 164 Cr.P.C. but due to

clerical error statement of the victim under Section 164 Cr.P.C. is typed in the cognizance order, in place of re-statement of the victim girl. He submits

that the Court after going through the records admitted that there is typographical error and that statement under Sections 164 Cr.P.C. of the victim

girl be read as re-statement of victim girl. Learned senior counsel further submits that this order also shows non-application of mind as because there

is no statement, far less any restatement of the victim girl in the entire case diary.

4. To verify the submissions of the learned senior counsel for the petitioners, I directed the learned A.P.P. to produce the case diary. Today, learned

A.P.P. has produced the case diary. He submits that the diary contains 82 paragraphs, but in these 82 paragraphs, there is no statement or

restatement of the victim girl, who is the victim under the POCSO Act. Charge sheet, in this case, was submitted under Sections 341, 323, 338, 504/34

of the Indian Penal Code. The same was not submitted under Section 354 A of the Indian Penal Code or under the provision of POCSO Act. The

court below took cognizance of the offence under the POCSO act and under Section 354A IPC also.

5. Further I find that the Court, in the impugned order, while differing with the charge sheet has not stated any reason as to why he is differing with

the charge sheet and the findings of the police, while taking cognizance under the provision of POCSO Act. The Honâ??ble Supreme Court in the

case of â??Nupur Talwar- versus- Central Bureau of Investigation, reported in (2012) 11 SCC 465â? has held that while differing with the charge

sheet, the court should assign a reason as to why he is differing.

6. I find that the court below has recorded that after going through the restatement of the victim girl, the cognizance was taken. Surprising if the victim

is the girl, who was the victim in respect of offence under the POCSO Act, her statement is not there in the entire case diary. The court below in a

most mechanical manner has passed the order dated 24. 09.2018 and the corrective order dated 22.12.2018. From the aforesaid two orders of the

Additional District & Sessions Judge-1st,-cum-Special Judge, POCSO, Dhanbad, this Court has an impression that the Special Judge had not even

gone through the records and had passed the aforesaid two orders in most mechanical manner. In the order dated 24.09.2018, he has stated that he

has gone through the statement of the victim girl, recorded under Section 164 Cr.P.C., in fact, which was not there. The said order was corrected vide

order dated 22.12.2018, wherein he has written that in place of statement under Section 164 Cr.P.C. of the victim girl, it be read as restatement of the

victim girl, when in fact, there is no restatement of the victim girl in the entire case diary. From the aforesaid fact, there can be no other alternative but

to conclude that the Additional District & Sessions Judge-1st,-cum-Special Judge, POCSO, Dhanbad has not gone through the record of the case and

has passed these two orders in a most mechanical manner. Merely writing few words like â??gone through the recordâ? or â??perused the recordâ?

cannot be conclusive of the fact that the court has gone through the record. The record should reflect that actually the court has gone through the

record. In this case, on the facts above, it cannot be said that the court had gone through the record. Order taking cognizance and order issuing

summons cannot be passed in a lightly manner, which has been done in this case by the Additional District & Sessions Judge-1st,-cum-Special Judge,

POCSO, Dhanbad.

7. In view of the aforesaid discussions and finding, I am inclined to set aside the impugned orders. Accordingly, the impugned order taking cognizance

dated 24.09.2018 and the corrective order dated 22.12.2018 are hereby set aside. The matter is remitted back to the Additional District & Sessions

Judge-1st,-cum-Special Judge, POCSO, Dhanbad, to go through the records and thereafter pass an order under Sections 190 & 204 Cr.P.C.

It is expected that the Additional District & Sessions Judge-1st,-cum-Special Judge, POCSO, Dhanbad should be more cautious in future.

Let a copy of this order be communicated to the concerned Judge as also to the Principal District & Sessions Judge, Dhanbad immediately through

FAX.