

(2023) 05 PAT CK 0076
In the Patna High Court
Case No : Criminal Revision No. 117 Of 2023

Abhishek Kumar

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 05-05-2023

Acts Referred:

Indian Penal Code, 1860 — Section 34, 323, 324, 325, 341, 354, 376, 379
Code Of Criminal Procedure, 1973 — Section 164, 190, 190(1)(c)
Protection of Children from Sexual Offences Act, 2012 — Section 4, 12

Citation : (2023) 05 PAT CK 0076

Hon'ble Judges : Dr. Anshuman, J

Bench : Single Bench

Advocate : Dhananjay Kumar, Damodar Prasad Tiwary, Choubey Jawahar

Final Decision : Dismissed

Judgement

Heard learned counsel for the petitioners and learned A.P.P. for the State as well as learned counsel for the informant.

The present Cr. Revision Application has been filed against the order dated 18.08.2022 passed in Bidupur P.S. Case No. 238 of 2021, by which, learned Additional District & Sessions Judge-Vith-cum-Special Judge, POCSO, Vaishali at Hajipur has taken cognizance for the offences under Sections 341, 323, 324, 354/34 of the Indian Penal Code read with Section 12 of POCSO Act and issued non-bailable warrant of arrest against the petitioners.

Learned counsel for the petitioners submits that F.I.R. bearing Bidupur P.S. Case No. 238 of 2021 has been lodged on 05.05.2021 under Sections 341, 323, 325, 376, 379/34 of the Indian Penal Code read with Section 4 of the POCSO Act. He further submits that in the said case total eight persons were named accused. He also submits that the order of cognizance is bad in law due to the reason that in the said cognizance order nothing whispered on merit, rather it has been passed in a routine manner. He further submits that it is false to state that on 18.08.2022 the victim was present in the court at the time of passing cognizance

order. Learned counsel submits that the court taking cognizance has acknowledged that in the statement under Section 164 of Cr.P.C. victim had only narrated that bite has been made in the right hand and her left hand was also injured by the accused persons. He further submits that the present case is the result of land dispute and counter case has not been acknowledged by the court. Learned counsel submits that vide order dated 30.08.2021 charge sheet No. 484 of 2021 has been submitted under Sections 341, 323, 325/354/34 of the Indian Penal Code read with Section 4 of POCSO Act. He further submits that court has added one another section in its cognizance order and cognizance has been taken against the petitioners under Sections 341, 323, 324, 354/34 of the Indian Penal Code read with Section 12 of POCSO Act. He submits that the petitioners were all along on Police bail and when the court has taken cognizance and for the purpose of securing the appearance of petitioners, issuance of non-bailable warrant directly instead of issuance of summon is bad in law and it is due to these reasons, he submits that the cognizance order should be quashed.

Learned counsel for the informant submits that he had filed separate counter affidavit. In the said counter affidavit, counsel submits that it is true that F.I.R. has been filed against eight named accused persons including the petitioners namely Abhishek Kumar, Aman Kumar, Yash Kumar @ Ayush Raj and Harsh Kumar @ Harsh Chauhan. With a view to make the things clear, counsel for the informant narrates the names of accused persons which are Arun Kumar Singh, Harsh Kumar @ Harsh Chauhan, Yash Kumar @ Ayush Raj, Raju Singh, Rajiv Kumar, Sanjeev Kumar, Abhishek Kumar and Aman Kumar. He further submits that presently there are four accused persons namely Abhishek Kumar, Aman Kumar, Yash Kumar @ Ayush Raj and Harsh Kumar @ Harsh Chauhan are before this Hon'ble Court. Learned counsel submits that the reasons best known to the I.O., on the same material three different charge sheets have been filed. Charge sheet No. 484 of 2021 dated 30.08.2021 was filed against accused Raju Singh and Sanjeev Kumar Singh. The second charge sheet No. 85 of 2022 dated 28.02.2022 was filed against Arun Kumar Singh. Whereas third charge sheet bearing charge sheet No. 409 of 2022 dated 31.07.2022 was filed against five accused persons namely Rajiv Kumar, Aman Kumar, Abhishek Kumar, Harsh Kumar @ Harsh Chauhan and Yash Kumar @ Ayush Raj. The petitioners are charge sheeted by the third charge sheet No. 409 of 2022 dated 31.07.2022. Learned counsel further submits that since Police has submitted three different charge sheet in this case, it is due to this reason, the court has no option but to pass three different cognizance orders on three different dates on the same prosecution material and it is due to this reason the court has issued show cause also to the I.O.

Learned counsel for the informant submits that since charge sheet has been filed against the present petitioners on 31.07.2022, therefore, it is necessary to proceed against those accused persons for trial, order of cognizance ought to be passed. According to the counsel for the informant the order impugned is basically the order of cognizance which has been passed on the charge sheet

filed against five accused persons including the petitioners. He further submits that under Section 190 (1)(c) of the Cr.P.C. it is well within the power of the court that at the time of taking cognizance the court either on the basis of Police report or on the basis of complaint or on the basis of his own knowledge may differ from the Police report and take cognizance that such offence has been committed, therefore, taking cognizance by the court vide order dated 18.08.2022 is absolutely in accordance with law and there is no illegality in the same. Learned counsel further submits that the petitioners after filing of F.I.R. had obtained the Police bail and thereafter not secured their appearance before the court. The offence under which cognizance is taken are non-bailable. It is also argued that out of eight accused persons, the trial of two accused persons has been advanced and they have reached at the stage of argument (counsel for petitioner submits that according to his knowledge it is going on at the stage of defence witness).

Learned counsel for the State submits that the order impugned is absolutely legal and completely in accordance with law due to the reason that it is well within the ambit of the court that prior to passing order, he may hear the informant on the point of cognizance. He further submits that the order impugned may be irregular but it is not illegal as this court is competent to take cognizance and the irregularity, if any, shall not vitiate the case in the eyes of law. He also submits that it is well within the power of the court to issue summon or warrant as the case may be. He submits that here in the present case, the case is Sessions triable and directly issuing warrants without issuing summon cannot be said to be an illegal act and in any view of the matter this order is fit to sustain.

Upon hearing the parties and going through the documents, this Court finds that it is very much clear by the order dated 18.08.2022 that the victim has appeared in the court on 29.07.2022 itself upon notice and on 18.08.2022 the court has repeated the version of the earlier date in the first part of the order, therefore, the construction of the petitioners is not accepted by the court.

According to Section 190 of Cr.P.C., it is well within the power of the court that at the time of taking cognizance the court may differ from the charge sheet and, therefore, insertion of Section 12 of the POCSO Act in the cognizance order dated 18.08.2022 is not bad in the eyes of law.

So far as the issuance of warrant without issuance of summon is concerned, this Court is of the view that from the very beginning, the petitioners were well aware that they are accused of cognizable offence and they were on Police bail then it is their duty to secure their appearance well within time by taking bail and, hence, in the view of this Court after taking cognizance issuance of warrant directly without issuance of summons is not illegal particularly when the trial of two accused persons of the same F.I.R. has been well advanced and reached at the stage of argument/ D.W's.

In this view of the matter, this Court finds no illegality in the order of cognizance dated 18.08.2022 passed in Bidupur P.S. Case No. 238 of 2021 by learned Additional District & Sessions Judge-VIth-cum-Special Judge, POCSO, Vaishali at Hajipur, therefore, the present Cr. Revision Application stands dismissed.