

(2020) 01 PAT CK 0079

In the Patna High Court

Case No : Criminal Miscellaneous No. 83789 Of 2019

Afroz Alam

APPELLANT

Vs

State Of Bihar And Anr

RESPONDENT

Date of Decision : 06-01-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 34, 363, 365, 366(A), 376, 376(G), 504
Protection Of Children from Sexual Offences Act, 2012 — Section 4

Citation : (2020) 01 PAT CK 0079

Hon'ble Judges : S. Kumar, J

Bench : Single Bench

Advocate : Shiv Kumar Dwivedy, Shailendra Kumar

Final Decision : Disposed Of

Judgement

Heard learned counsel for the parties.

This application has been filed under Section 482 of the Cr.P.C for quashing the order dated 13.05.2019 passed by learned Additional Sessions Judge-

I, Bettiah, West Champaran in Nautan (Jagdishpur) P.S. Case No. 396 of 2017, instituted under Sections 365, 376(G), 504/34 of the Indian Penal

Code by which learned court below took cognizance against the accused-petitioners for the offence punishable under Sections 363, 366(A) and 376 of the Indian Penal Code and Section 4 of the POCSO Act.

Informant in her written complaint has alleged that on 15.08.2017 at about 11:00 pm when she had gone to attend the call of nature, in the meantime

Majid Ansari, Afroz Alam, Bittu Mian forcefully took her on motorcycle to an unknown place where Majid Ansari forced her to marry him.

Thereafter FIR named accused along with petitioner committed rape upon her

and intimidated her to marry Majid Ansari and said that we are granting you 15 days time and if you will deny then we will kill you. On the pressure of villagers and Ajay Kushwaha (Zila Parshad), Majid Ansari and Afroz

Alam on 30.08.2017 at about 12:00 pm handed her to her parents. On the basis of said written complaint Nautan (Jagdishpur) P.S. Case No. 396 of

2017 was instituted and after completing investigation police submitted chargesheet against the petitioner and the court below by order dated

13.05.2019 on the basis of police paper, took cognizance against the petitioner under Sections 363, 366(A) and 376 of the Indian Penal Code and

Section 4 of the POCSO Act.

On the basis of evidence collected during investigation, case diary and chargesheet filed against petitioner, the court below found prima facie case to

be made out against the petitioner and took cognizance for the offence punishable under Sections 363, 366(A) and 376 of the Indian Penal Code,

Section 4 of the POCSO Act, and issued summons for his appearance to face trial.

At the stage of taking cognizance the court has to form an opinion on the basis of materials available in case diary that whether a prima facie case is

made out against the accused or not.

The defence of the accused cannot be considered at the time of taking cognizance. This Court in its inherent jurisdiction cannot substitute its view

regarding sufficiency or adequacy of material before the court below at the time of taking cognizance and issuance of summons against accused as

same is within exclusive domain of trial court, as such I am not inclined to interfere with the order dated 13.05.2019 passed by learned Additional

Sessions Judge-I, Bettiah, West Champaran

However, the petitioner will be at liberty to raise all the issues raised before this Court as well as other points available to him in accordance with law

at subsequent stage i.e. at the time of framing of charge.

Subject to the aforesaid observation and liberty, this application is disposed of.