

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Criminal Revisional Jurisdiction)**

Cr. Revision No.663 of 2022

Rahul Yadav @ Hari Kumar Yadav, aged about 25 years, son of Chandradeo Yadav, resident of Village Rupin Dadhuwa, PO & PS Gidhour, District Chatra. Petitioner

Versus

1. The State of Jharkhand

2.

.... Opposite Parties

(Heard on 29.11.2023)

PRESENT

CORAM : HON'BLE MR. JUSTICE SUBHASH CHAND

For the Petitioner : Mrs. Jasvindar Mazumdar, Advocate
For the State : Mr. Abhay Kumar Tiwari, APP
For the OP No.2 : Mr. Shekhar Pd. Gupta, Advocate

J U D G M E N T

CAV On 29th November 2023

Pronounced on 20th December 2023

Per, Subhash Chand, J.

The instant criminal revision has been directed on behalf of petitioner Rahul Yadav @ Hari Kumar Yadav against the order dated 04.05.2022 passed by the learned Special Judge (POCSO), Chatra in Misc. Cr. Application No. 1086 of 2021 under section 227 of the Code of Criminal Procedure (Hereinafter referred to as 'Cr.PC') in connection with POCSO Case No.30 of 2021 arising out of Gidhour P.S. Case No.01 of 2021 whereby and whereunder the learned court below had rejected the application for discharge of the petitioner accused.

2. The brief facts leading to this criminal revision are that informant had given a written information with the police station concerned with these allegations that his 15 years old minor daughter was missing from 1 O' clock of night of 13.01.2021 from his house. On

12.01.2021 at 10:30 all the family members had gone to sleep to their bed. All of sudden his daughter was not found on her bed. The search was also made of her. His minor daughter was studying in Class-Xth. One and half year ago a teacher of the school Rahul Yadav @ Hari Kumar Yadav who was having evil eye upon his daughter. Complaint of the same was made to the Manager of the school and the school management had removed him from the school even that, after he used to make effort to meet his daughter. With this utter belief that Rahul Yadav @ Hari Kumar Yadav alongwith his associates had kidnapped his daughter with intent to have illicit relation with her the report was lodged. On this written information case crime no.1 of 2021 was registered under section 363, 366A of IPC against the accused Rahul Yadav @ Hari Kumar Yadav with the police station Gidhour District Chatra. During investigation the offence under section 302 r/w 201 was also made out from the evidence collected by the IO and accordingly both these sections were also added and the IO after having concluded the investigation filed F.R. against Rahul Yadav @ Hari Kumar Yadav for the offence under section 363, 366(A), 302, 201, 376D, 34 of the Indian Penal Code and section 4 of POCSO Act. The final report Form No.29 of 2021 on 20.04.2021 was filed against the petitioner Rahul Yadav @ Hari Kumar Yadav for lack of the evidence and the investigation against the rest of the accused Md. Sahjad, Md. Ajhar, Md. Sahabuddin was continued on other points in supplementary investigation.

3. Against the final report filed by the IO for lack of evidence against the petitioner Rahul Yadav @ Hari Kumar Yadav the learned trial court took cognizance vide order dated 23.04.2021 on the basis of the

evidence collected by the IO for the offence under section 12 of the POCSO Act.

4. As such the trial against the present petitioner Rahul Yadav @ Hari Kumar Yadav commenced against him for the offence under section 12 of POCSO Act.

5. On behalf of petitioner Rahul Yadav @ Hari Kumar Yadav an application for discharge was filed before the trial court on the grounds that though the petitioner was named in the FIR which was lodged on the basis of mere suspicion. There is nothing on record on the evidence collected by the IO to make out the said offence under section 12 of POCSO Act against the petitioner accused. On these grounds prayed to discharge the petitioner.

6. The learned trial court after hearing the rival submission of learned counsel for the petitioner/accused and learned public prosecutor for the State passed the impugned order on 04.05.2022 whereby the application for the discharge of the petitioner was rejected.

7. Aggrieved from the impugned order dated 04.05.2022 passed by the learned Special Judge, POCSO, Chatra the instant criminal revision has been directed on behalf of the petitioner on the ground that the impugned order passed by the learned court below is bad in the eye of law. The learned court below has failed to apply its judicial mind while passing the impugned order which is based on erroneous finding recorded by the learned court below. Learned court below has miserably failed to take into consideration that no *prima facie* case is made out against the petitioner to proceed with the trial so as to frame the charge for the offence under

section 11 and 12 of POCSO Act. The petitioner has been made scape goat, while there is no cogent material evidence against him to proceed with the trial. In view of the above prayed to allow the criminal revision and to set aside the order dated 04.05.2022 passed by the learned court below whereby the discharge application of the petitioner had been rejected.

8. I have heard the learned counsel for the petitioner Mrs. J. Mazumdar, learned APP for the State Mr. Abhay Kr. Tiwari and Mr. Shekhar Pd. Gupta for opposite party no.2 and perused the material on record.

9. It is the settled law that while framing the charge the trial court has to take into consideration the allegations made in the FIR and the evidence collected by the IO during investigation if from them, there are sufficient ground to proceed with the trial against the accused the court should decline the discharge application of the accused.

10. It is also the settled law that while disposing off the discharge application of the accused the court should not appreciate the evidence on record. The appraisal of the evidence, marshalling of the evidence and conducting mini trial at the time of disposing discharge application is not permissible. It is also the settled law that even if there is a sufficient material for the grave suspicion, the court should decline the discharge application.

11. Herein the certain statutory provisions and the judicial pronouncement made by the Hon'ble Apex Court are being reproduced for enabling this Court to come at the proper conclusion in disposing this

criminal revision.

12. **Section 2(1)(j)** 'sexual harassment' as the same meaning as assigned to it in section 11.

13. **Section 11** of the **POCSO Act 2012** reads as under:

“11. Sexual harassment.- A person is said to commit sexual harassment upon a child when such person with sexual intent,-

(i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or

(ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or

(iii) shows any object to a child in any form or media for pornographic purposes; or

(iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or

(v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or

(vi) entices a child for pronographic purposes or gives gratification therefor.

Explanation.- Any question which involves “Sexual intent” shall be a question of fact.”

14. **Section 12** of the **POCSO Act 2012** reads as under:

“12. Punishment for sexual harassment.- Whoever,

commits sexual harassment upon a child shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.”

15. In “**Sanghi Brothers (Indore) Private Limited v. Sanjay Choudhary and others**” (2008) 10 SCC 681, the Hon'ble Apex Court has held at para-11, which reads as under:

“11. Sections 227, 239 and 245 deals with discharge from criminal charge. In State of Karnataka v. L. Muniswamy it was noted that at the stage of framing the charge the court has to apply its mind to the question whether or not there is any ground for presuming the commission of offence by the accused. The court has to see while considering the question of framing the charge as to whether the material brought on record could reasonably connect the accused with the trial. Nothing more is required to be inquired into.”

16. In “**Rukmini Narvekar v. Vijaya Satardekar and others**” (2008) 14 SCC 1, the Hon'ble Apex Court has held at para-38, which reads as under:

“38. In my view, there is no scope for the accused to produce any evidence in support of the submission made on behalf at the stage of framing charge only such material as are indicated in Section 227 CrPC can be taken into consideration by the learned Magistrate at that stage. However, in a proceeding taken therefrom under Section 482 CrPC the court is free to consider material that may be produced on behalf of the accused to arrive at a decision whether the charge as framed could be maintained. This, in my view, appears to be the intention of the legislation in wording Sections 227 and 228 the way in which they have to be worded as explained in Debendra Nath Padhi case by the larger Bench therein to which the very same question had been referred.

In some rare cases the court can look into the material produced by the defense if the same establishes and convinces

that the prosecution case is totally absurd.”

17. In “**Palwinder Singh v. Balwinder Singh and others**” (2008) 14 SCC 504, the Hon'ble Apex Court has held at para-13, which reads as under:

“13. Having heard the learned counsel for the parties, we are of the opinion that the High Court committed a serious error in passing the impugned judgment insofar as it entered into the realm of appreciation of the evidence at the stage of framing charge itself. The jurisdiction of the learned Sessions Judge while exercising the power under Section 227 of the Code of Criminal Procedure is limited. Charge can be framed on the basis of strong suspicion. The Marshalling and appreciation of the evidence is not in domain of the Court at the point of time. This aspect of the matter has been considered by this Court in State of Orissa v. Debendra Nath Padhi (2005) 1 SCC 568.”

18. In “**P. Vijayan v. State of Kerala and another**” 2010 AIR SCW 886, the Hon'ble Apex Court has held at para-10, which reads as under:

“10. If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the Trial Judge will be empowered to discharge the accused and at this stage he is not to see whether the trial will end in conviction or acquittal. Further, the words "not sufficient ground for proceeding against the accused" clearly show that the Judge is not a mere Post Office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the Court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the Court, after the trial starts. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other

words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the Court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him.”

19. In “***Vikram Johar v. State of U.P.***” AIR 2019 SC 2109, the Hon'ble Apex Court has held at para-19, which reads as under:

“19. It is, thus, clear that while considering the discharge application, the Court is to exercise its judicial mind to determine whether a case for trial has been made out or not. It is true that in such proceedings, the Court is not to hold the mini trial by marshalling the evidence.”

20. From the very perusal of the FIR it is found that this FIR was lodged against Rahul Yadav @ Hari Kumar Yadav in regard to kidnapping the minor daughter of the informant with intent to have illicit relation with her. With the allegations that his minor daughter was student of Class-Xth in Children Pararise School, Gidhour. From one and half years the teacher of the school Rahul Yadav @ Hari Kumar Yadav was having an evil eye upon his minor daughter. Compliant of the same was made against him to the Management of the school. Therefore, he was removed from the post of Teacher from that school. Still after that he had been making effort to meet his minor daughter.

21. In the case diary in **para-3** the IO recorded the **restatement of informant** in which he reiterated all those allegations as made in the FIR. In **para-7** of the **case diary** statement of , the mother of victim was recorded. In her statement she also corroborated the prosecution story and also stated that after removal from the school

Rahul Yadav @ Hari Kumar Yadav had criminally intimidated to see them and he had also made effort to follow her minor daughter. The same kind of statement is given by **Sumida Rani**, the sister of the victim in **para-6** of the case diary. **In para-18** of the case diary the **statement of Riashu Riti** was recorded in which she stated that **victim was her close friend**. She stated that Rahul Yadav @ Hari Kumar Yadav used to teach victim over the phone. When she told in this regard to her mother and father, the Principal of the school on this complaint had removed him from the school. Victim has told her this fact three months ago. **In para-19** of the case diary statement of **Aarti Kumari** was recorded. **She is classmate of victim**. She also gave the same kind of statement and stated that victim had told her that Rahul Yadav @ Hari Kumar Yadav the teacher of the school had been teaching her over the phone. On this complaint, the teacher Rahul Yadav @ Hari Kumar Yadav was removed from the school. Victim had told this fact three months ago.

22. The body was brought out from the Pond and same was identified. During investigation the IO received the information over the telephone that the dead body of kidnapped victim girl was lying in a pond Datwaahar situated in village Gangpur. The body was identified to be of victim girl the daughter of the informant in view of para-54 of the case diary. The inquest report of the dead body of the deceased girl was prepared in para-56 of the case diary.

23. **In para-76** of the case diary the **statement of Rajveer Kumar, the younger brother of the victim girl** was recorded in which he stated that his sister was studying in Class-10th of Children Pararise

School. For two years back, her teacher Rahul Yadav @ Hari Kumar Yadav had been teasing her. Complaint of the same was made by his father to the Principal of the school and the teachers Rahul Yadav @ Hari Kumar Yadav was removed from the post of teacher from that school. Thereafter, he has criminally intimidated them. He had also been making effort to talk with his sister. On previous Sunday the teacher Rahul Yadav @ Hari Kumar Yadav had come to the salon which is in front of his house and he was watching towards his house. As per **para-123 of the case diary, the CDR detail of the phone number** of the accused Rahul Yadav @ Hari Kumar Yadav and the victim daughter of the informant was given which shows that no talk was held over these phone number between Rahul Yadav @ Hari Kumar Yadav and Supriya Rani on 12.01.2021 as per tower location. In **para-141 of the case diary the restatement of Sumidha Rani was recorded who is sister of victim girl.** She stated that Md. Sahabuddin @ Saheb who runs the shop of *tyre panchar* came in her contact in the year 2020. Thereafter, her friendship developed with Sahabuddin. He used to send message on whatsapp and used to call her on the phone. She used to take online class during the lockdown over this mobile phone. **In regard to the love affair of her with Sahabuddin her sister also came to know.** Sahabuddin also gave the another mobile number. Her younger brother also came to know in regard to this fact. Her mother also prohibited her to talk with Sahabuddin. **Since her sister used to not like her relation with Sahabuddin. Sahabuddin was annoyed with this and he had told her that he would teach her lesson and he will do something. This was stated by him on 12.01.2021.** Again at 9:30

she talked on whatsapp with Sahabuddin. He came to her house in the night to meet her alongwith his friend Md. Ajhar and Md. Sahjad. **The friend of Sahabuddin caught hold of her sister. Her sister cried but on the pointing of knife they dragged her with them. On account of fear she could not tell in regard to this occurrence to her parents. Since she loved Sahabuddin and thereafter the dead body of her sister was found from the pond.** As such during investigation, the IO also conducted the postmortem report of the deceased. The autopsy of the deceased conducted and also collected the other evidence in regard to the committing rape and also committing murder of the deceased girl. The investigation against them are pending but the IO has filed the closure report against the petitioner showing no evidence against him. On the closure report sent by the investigating officer against Rahul Yadav @ Hari Kumar Yadav the trial court concerned took cognizance for the offence under section 12 of POCSO Act.

24. From the very definition of sexual harassment as provided under **section 2(J)** of the **PCOSO Act 2012**. Sexual harassment the meaning of the same is assigned in section 11.

25. **Section 11** of the **POCSO Act 2012** which has been reproduced hereinabove in which it is provided that a person is said to commit the sexual harassment upon a child when such person with sexual intent repeatedly or consistently follows or watches or contacts a child either directly or through electronic, digital or any other means will amount sexual assault in view of section 11(4) of the POCSO Act.

26. In the FIR itself, it has been stated that the minor victim girl of

the informant was sexually harassed by the teacher of the school he used to tease her. He was also having evil eye so the complaint was made against him to the Principal of the school and he was removed from the post of teacher from that school. Thereafter, he had threatened to see them. **This allegations of the FIR is also corroborated with the statement of father of victim- ; Mother of victim , the younger sister of victim girl Sumedha Rani, Riashu Riti, the friend of victim girl, statement of Aarti, the classmate of victim girl, 10 years old brother of victim girl, Rajveer Kumar were also recorded by the IO during investigation and all these witnesses in their statement under section 161 of Cr.PC have stated that the accused Rahul Yadav @ Hari Kumar Yadav used to tease the victim girl. He was having evil eye. He used to make phone call over a mobile phone. For the same she had made complaint in her house and father of the victim girl made complaint of the same to the Principal of the school concerned and the Principal had removed him from the post of teacher. Thereafter he had threatened them to see. It has also been stated by these witnesses that even after removal from the post of teacher from that school he used to make effort to follow the victim daughter of the informant and also had been making effort to meet her and to talk her. As such, the act of the present petitioner comes within periphery of section 11(4) of the POCSO Act, 2012 which amounts sexual harassment as explained in section 2(J) of the POCSO Act, 2012 and the same is punishable under section 12 of the POCSO Act, 2012.**

27. Herein from the allegations made in the FIR and the statement

of the witnesses under section 161 of Cr.PC as narrated hereinabove, there is ample evidence against the petitioner in regard to the sexual harassment caused to the victim who is deceased girl of the informant.

28. In view of the discussion made hereinabove and also keeping in view the settled proposition of law as laid down by the Hon'ble Apex Court in the aforesaid cases given hereinabove, I am of the considered view that the impugned order passed by the court below does not bear any illegality and same needs no interference. Accordingly, this criminal revision deserves to be dismissed.

29. This criminal revision petition is, hereby, dismissed and the impugned order passed by the learned court below is affirmed.

30. Let the copy of the judgment be communicated to the concerned court alongwith the record.

(Subhash Chand, J.)

Jharkhand High Court, Ranchi

Dated: 20.12.2023

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