IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.31491 of 2019

CNR No. BRHC010398032019

Arising Out of PS. Case No.-2 Year-2017 Thana- MAHILA PS District- Jehanabad

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1. Ataur Rahman @ Md. Ataur Rahman Son of Late Najibur Rahman Resident of Mohalla - Shekh Alam Chak, Jehanabad, P.S.- Jehanabad, District- Jehanabad
2. Abdual Barik @ S.M. Mazahrul Bari Son of Late Syed Abdul Bari Resident of Mohalla - Millat Lane Fida Hussain Road, Jehanabad, P.S.- Jehanabad, District - Jehanabad
3. Md. Shaukat Son of Late Md. Mohiuddin Resident of Village - Jehana, P.S.- Atri Jahana, District - Gaya
4. Azzu Ahmad Son of Islam Miyan Resident of Mohalla - Millat Lane Fida Hussain Road, Jehanabad, P.S.- Jehanabad, District - Jehanabad

... ... Petitioners

Versus

1. The State of Bihar
2. Rina Sinha Wife of Sri Ramswaroop Singh Resident of Village - Kako, P.S.- Kako, District- Jehanabad

... ... Opposite Parties

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Appearance :

For the Petitioners	:	Mr. Madanjeet Kumar, Adv. Mr. Rajeev Ranjan
For the Informant	:	Dr. Alok Kumar Sinha, Adv.
For the State	:	Mr. Arun Kumar Pandey, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 29-10-2026

Heard the parties.

2. The present petition has been filed for quashing the order dated 02.02.2019 passed by learned 1st Additional District and Sessions Judge-Cum-Special Judge, Jehanabad, in connection with Jehanabad Mahila Police Station Case No. 02 of 2017 through which cognizance was taken for the

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offfences punishable under section 376(D)/34 of the Indian Penal Code and Section 4 of POCSO Act.

3. The prosecution case is that informant is a Physical Teacher posted in middle school, Kako, Jehanabad. On 15.01.2017, her minor deaf and dumb daughter who used to live with her mother in school was gang raped by accused persons on the roof of school. It was found that blood was coming out from her private part. Prior to the said occurrence accused persons also outrage the modesty of her daughter. She also asserted that to know the veracity of her allegation, medical examination of her daughter and semen test of accused persons be made out then truth will come out.

4. On the basis of written application of the informant regarding aforesaid occurrence, the present FIR was lodged as Jehanabad Mahila P.S. case No. 02 of 2017 with the police for the offences punishable under Sections 376D/ 34 of the Indian Penal code and also Section 4 of the POCSO Act. The Police after investigation submitted final report against four named co-accused persons including this

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petitioner.

5. The cognizance was taken by learned Judicial Magistrate taking a different note after perusal of case diary, charge-sheet, protest petition, supplementary protest petition, statement of the informant under Section 164 of Cr.PC, medical report, FSL Report etc. against all four named co-accused persons/petitioners for the offences punishable under Sections 376D/34 of the IPC and Section 4 of the POCSO Act.

6. It is submitted by learned counsel appearing for petitioners that petitioners were implicated out of oblique motive. It is submitted that the minor daughter of the informant a is deaf and dumb girl and taking advantage of her physical condition, the petitioners were implicated with whom the informant/mother of the victim was not in good relation. It is submitted that the allegation of bleeding which was found on yellow jeans and dark brown panty of victim was due to menstrual cycle and said fact was also opined by the medical board. It is submitted that no injuries were found in or around the private part or any body part of the

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victim/daughter of the informant aged about 12 years as to suggest that she was subjected to gang rape by co-accused persons, as alleged. It is also pointed out that police submitted closure report after investigation and taking a different view without assigning any reasons, learned Judicial Magistrate took cognizance for heinous offences, against Teachers and Headmasters of the school, appears not justified and on this score alone, the cognizance order be set-aside. In support of his submission, learned counsel relied upon the legal report of Hon'ble Supreme Court as available through ***Mrityunjay Kumar Chaudhary Vs. State of Bihar and Anr.*** reported in ***2026 Livelaw (SC) 1043).***

7. It would be apposite to reproduce the paragraph no. 8 of the ***Mrityunjay Kumar Chaudhary case (supra)*** which are as under:-

> *" 8. On the consequence of a final report filed by the Police, which is termed a 'closure report', we extract herein paragraph 16 of Brajesh Kumar alias Birjesh Kumar Singh v. State of Bihar2, (authored by one of us, K. Vinod Chandran, J.):-*
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> *'16. Ram Naresh Prasad v. State of Jharkhand(2009) 11 SCC 299 held that when the police file a report, colloquially termed a 'closure report'; finding no sustainable case made out, the Court cannot direct a charge sheet to be filed, but could always take cognizance on the basis of the material in the report or*

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direct further investigation. H.S. Bains v. State (U.T. of Chandigarh) (1980) 4 SCC 631 & Ramswaroop Soni v. State of M.P. (2020) 18 SCC 327 reiterated that when a closure report is filed finding no offence made out, the Court has three options; (i) to accept the same and close the proceedings or (ii) take cognizance of the matter on the materials in the report or (iii) direct further investigation. It is thus open to the Magistrate on submission of a closure report to look into the material facts disclosed in the report and form an opinion as to whether it constitutes an offence and take cognizance of the offence under Section 190(1)(b). To buttress this position, Abhinandan Jha1967 SCC OnLine SC 107 made reference to Section 169 of the Code which provides that even if the police officer finds on investigation that there is no reasonable ground or sufficient evidence to put the accused on trial, the officer while releasing the accused has to take a bond for appearance before the Magistrate, if required. The primacy of the Court to take cognizance or deny it is the law discernible from the very provisions of the CrPC."

8. Learned counsel appearing for the informant while opposing the quashing petition submitted that all four co-accused persons are named in the FIR facing specific allegation of gang rape.

9. Considering the submission and upon perusal of FIR, it appears that all accused petitioners are named in FIR facing allegation of gang rape upon minor daughter of the informant aged about 12 years, who was the student of class VIth of the same school. It also transpired from the impugned order that this matter travelled up to Human Rights Commission complaining the partisan role of Senior Police Officer to destroy/temper with the evidence including I.O.,

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S.D.P.O., and SP, Jehanabad. During investigation, the occurrence was also supported by the informant, through her statement which was recorded under Section 164 of the Cr.PC.

10. This Court is of considered view that none finding of injury as submitted aforesaid by learned counsel does not lead to conclusion *ipso facto* that rape was not committed upon as rape is a legal finding not a medical one. Reliance must be place on the judgment of Hon'ble Supreme Court as available through ***State of Tamil Nadu V. Ravi @ Nehru*** reported in **(2006) 10 SCC 534**. This Court is also of the view that submission raised regarding blood stains available on panty and jeans of the victim that same was due to menstrual cycle or due to alleged gang rape is a disputed fact, which cannot be ascertained while hearing the present petition as same can be ascertained during the trial only. It also transpires that the cognizance order is well reasoned, which passed upon the materials available on record like FIR, charge-sheet, statement of the informant recorded under Section 164, FSL Report etc. No doubt,

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learned Jurisdictional Magistrate is duly empowered under the law to take a different view against the closure report, need not any detailed discussion in this regard.

11. It would be apposite to reproduce the paragraph no. 15 of the ***Ravi @ Nehru case (supra)*** which are as under:-

> *"15. We may also notice the opinion expressed by Modi in Medical Jurisprudence and Toxicology (21st Edn.) at p. 369 which reads thus:*
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> *"Thus, to constitute the offence of rape, it is not necessary that there should be complete penetration of penis with emission of semen and rupture of hymen. Partial penetration of the penis within the labia majora or the vulva or pudenda, with or without emission of semen, or even an attempt at penetration is quite sufficient for the purpose of the law. It is therefore quite possible to commit legally, the offence of rape without producing any injury to the genitals or leaving any seminal stains. In such a case, the medical officer should mention the negative facts in his report, but should not give his opinion that no rape had been committed. Rape, is crime and not a medical condition. Rape is a legal term and not a diagnosis to be made by the medical officer treating the victim. The only statement that can be made by the medical officer is that there is evidence of recent sexual activity. Whether the rape has occurred or not is a legal conclusion, not a medical one."*

12. In view of aforesaid, this Court is convinced enough that there is no occasion to interfere with the cognizance order dated 02.02.2019 as passed by 1st Additional District and Sessions Judge-cum- Special Judge, Jehanabad in Jehanabad Mahila P.S Case No. 02 of 2017.

13. Accordingly the present petition stands

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dismissed.

14. Let the copy of the judgment be sent to learned trial court forthwith with TCR, if any.

(Chandra Shekhar Jha, J.)

Aniket/-

AFR/NAFR	NAFR
CAV DATE	N/A
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