

**IN THE HIGH COURT OF JHARKHAND, RANCHI**

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**Cr.M.P.No.2356 of 2021**

Ram Nandan Paswan @ Raj Nath Paswan, aged about 67 years, son of late Jitan Paswan, resident of Patna Line, Bajrang Chowk, P.O. Sidhgora and PS Sidhgora, Town-Jamshedpur, District East Singhbhum (Jharkhand)  
..... Petitioner

-- Versus --

The State of Jharkhand

..... Opposite Party

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**CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI**

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For the Petitioner :- Mr. Indrajit Sinha, Advocate

For the State :- Mr. Ashish Kumar, Advocate

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**2/04.01.2022** This petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been heard.

This petition has been filed for quashing of the entire criminal proceeding as well as order taking cognizance dated 04.06.2020 in connection with Special (POCSO) Case No.22 of 2020, corresponding to Sidhgora P.S. Case No.169 of 2019 pending in the court of learned Additional Sessions Judge cum Special Judge (POCSO), at Jamshedpur.

The case was lodged stating therein that the prosecution as per the FIR in brief is that the victim aged about five years is daughter of informant. The informant was doing work of maid in the house of the accused Ram Nath Paswan. It is alleged that the accused used to do obscene act with minor victim daughter. It is alleged that when the victim feel pain in her private part, then the informant asked to her daughter who disclosed that when informant used to work, the accused took her victim daughter to show TV and he did obscene act with her daughter. It is alleged that the accused person did such act several times. When she asked then her daughter told that Dadu did the alleged act with her on pretext of showing T.V.

Mr. Indrajit Sinha, the learned counsel for the petitioner submits that the petitioner is aged about 67 years and the entire allegation against the petitioner is false. He submits that the wife of the

petitioner had also lodged FIR being SC/ST Birsa Nagar P.S. Case No.11/2019 against the informant and other co-accused persons. He submits that after investigation the I.O submitted final form showing lack of evidence against the petitioner and inspite of that the learned court has taken cognizance against the petitioner. He submits that there is no reason assigned on differing.

It is well settled that no detailed order is required to be passed for passing any order for summoning the accused but in the case where final form has been submitted in favour of the accused and the Magistrate is intending to proceed on a complaint petition, he is required to make reasons of differing with the final form which has not been done in the case. There is no doubt that the concerned court should differ and it is within its jurisdiction of the court but to take cognizance, for that reason is required to be disclosed in the order which has not been done in the case in hand.

A reference may be made to the case of "*Nupur Talwar v. Central Bureau of Investigation and Another*", (2012) 11 SCC 465.

Paragraph no.19 of the said judgment is quoted hereinbelow:

*"19. Since CBI wanted the matter to be closed, it was appropriate though not imperative for the Magistrate to record reasons, for differing with the prayer made in the closure report. After all, CBI would have surely wished to know, how it went wrong. But then, there are two other important factors in this case, which further necessitated the recording of reasons. Firstly, the complainant himself (Dr. Rajesh Talwar, who authored the first information report dated 16.05.2008) was being summoned as an accused. Such an action suggests, that the complainant was really the accused. The action taken by the Magistrate, actually reversed the position of the adversaries. The party which was originally pointing the finger, is now sought to be pointed at. Certainly, the complainant would want to know why."*

The learned counsel appearing on behalf of the respondent State opposes the prayer made by the learned counsel for the petitioner.

In the case in hand, the learned court has differed with the charge sheet and taken cognizance. In the cognizance order the reason has not been assigned as to why cognizance is required to be taken against the petitioner. In view of settled law the impugned order dated 04.06.2020 passed in connection with

Special (POCSO) Case No.22 of 2020, corresponding to Sidhgora P.S. Case No.169 of 2019 pending in the court of learned Additional Sessions Judge cum Special Judge (POCSO), at Jamshedpur is hereby set aside.

The matter is remitted back to the concerned court to pass fresh order in light of the settled proposition of law in this regard.

Disposed of.

**( Sanjay Kumar Dwivedi, J )**

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