

# LAWCHAKRA.IN

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Revision No. 1254 of 2022

Dr. Irfan Ansari,

..... Petitioner

Versus

The State of Jharkhand

..... Opposite Party

**CORAM: HON'BLE MR. JUSTICE ARUN KUMAR RAI**

For the Petitioner : Mr. Indrajit Sinha, Advocate  
Mr. Kumar Rahul Kamlesh, Advocate  
For the State : Mr. P.C. Sinha, AC to GA-III

## JUDGEMENT

**CAV on:17.05.2024**

**Pronounced on: 06.09.2024**

The instant criminal revision has been preferred by the petitioner against the order dated 25.07.2022 passed by the learned Additional Sessions Judge-III Dumka in Misc. CrI. Appeal No. 459 of 2022, Special POCSO Case No. 47 of 2021 arising out of Jamtara P.S. Case No. 175 of 2018, whereby and whereunder the learned Court has dismissed the petition of the petitioner filed under Section 227 of the Code of Criminal Procedure, 1973 and fixed the case for framing of the charge.

However, the learned trial court framed the charge vide its order dated 21.11.2022 against the petitioner, during the pendency of the instant criminal revision and accordingly the petitioner has filed interlocutory application being I.A. No. 2315 of 2023 for the amendment and addition in the existing prayer to the extent regarding the quashing of the order dated 21.11.2022, whereby charges were framed.

In pursuant to the order dated 17<sup>th</sup> May 2024 of this Court, the prayer for addition/amendment in view of I.A. No. 2315 of 2023 has been allowed. The additional prayer portion of the Cr. Revision No. 1254 of

2022 against which the petitioner is also seeking revision which reads as follows:

“1. (A) For quashing the order dated 21.11.2022, passed by the learned Additional Sessions Judge-III-cum-Spl. Judge, Dumka, whereby the charges against the petitioner under Sections 228 (A), 120 B of the IPC, Section 74 (1) (3) of Juvenile Justice Act, 2012 and Section 23 of P.O.C.S.O. Act, 2012 has been framed.”

2. The brief facts of the present case is that FIR got instituted on the written report of one ASI namely, Manjur Alam who allegedly stated therein that in the course of verification of Jamtara P.S. Sanha No. 24/18 dated 28.10.2018 when he made an enquiry from Manali Rai, Hospital Manager, then he came across the fact that one Karmatand P.S. Case No. 128 of 2018 dated 27.10.2018 under Section 376 of IPC and Section 4 of POCSO Act has been lodged and victim of the said case brought to Sadar Hospital, Jamtara on 27.10.2018 at 9.30 P.M. in the night and victim got admitted by Dr. Subodh Kumar and she was being treated by Dr. Subodh Kumar and Dr. Manjula Murmu. It is further alleged that on 28.10.2018 at about 15.00 hrs. local M.L.A.- Dr. Irfan Ansari and his supporters visited Hospital to show their sympathy to the victim and her family member and after taking name, address and photograph of victim, it was sent to media and other organization from mobile No. 9771400857. Informant got copy of screen shot of above said message and photographs, as such, the above said act has been found violative of Section 74 (1) (3) of Juvenile Justice (Care and Protection of Children) Act, 2015, Section 23 of POCSO Act and Section 228 A of IPC and therefore, present FIR being Jamtara P.S. Case

No. 175 of 2018 came into existence and petitioner has been shown as an accused.

3. After lodging of aforesaid FIR, investigation was carried out during which statement of numbers of witnesses were recorded by the Investigating Officer and finally chargesheet has been submitted against Tarkeshwar Rai, Secretary of the petitioner herein and on account of lack of evidence, petitioner was not sent up for trial.

Case diary reveals that I.O has collected material during course of investigation that mobile no. 9771400857 from which allegedly name, address and photograph of the victim got circulated/viralled was being used by Tarkeshwar Rai, Secretary of petitioner and on this score, investigating officer did not sent petitioner for trial.

4. After filing of chargesheet against Tarkeshwar Rai, Secretary of petitioner, learned Magistrate took cognizance of offence under Section 74 (1) (3) of Juvenile Justice Act, 2015, Section 23 of POCSO Act and Section 228- A of IPC and proceeded against above named Tarkeshwar Rai as well as present petitioner vide order dated 12.03.2020.

5. Perusal of record further transpires that petitioner filed a petition for discharge under Section 227 of Cr. P.C. on the premise that no iota of material was/is found during course of investigation against the petitioner, however plea of petitioner was declined by the learned trial court and discharge petition was dismissed vide order dated 25.07.2022. Thereafter, even charge has also been framed against the petitioner and after filing of present revision petition, two witnesses in the present case also got examined before the learned trial court.

6. Learned counsel for the petitioner has raised two limbs of argument

for discharge of petitioner in the present case. First one, it is agitated before this Court that during course of investigation, there is ample material collected by I.O. which clearly transpires that it is Tarkeshwar Rai, Secretary of the petitioner who was using mobile phone No. 9771400857 of the petitioner and without the consent of petitioner such information was forwarded, as such, there is no culpability of petitioner in the present matter.

**Secondly**, it has been argued on behalf of petitioner that even taking the allegation on its face value, even then, no offences made out on account of fact that there is no material collected during course of investigation which could show that petitioner printed or published the name or other information which may disclose the identity of the victim.

7. Further, it has been pointed out that there is no iota of evidence collected which could even remotely show that petitioner has either made any report or presented any comment qua the victim, in any form of media or studio or photographic facilities.

8. Learned counsel for the petitioner just to buttress his argument, read line by line of Section 228 A of Indian Penal Code, Section 23 of POCSO Act and Section 74 (1) (3) of Juvenile Justice (Care and Protection of Children) Act, 2015 and thereafter concluded his argument by making submission that by no stretch of imagination, material available in the case diary could remotely show that even prima facie case is made out against the petitioner.

9. Learned counsel for the State pointed out the statement of witnesses recorded in the case diary and tried to convince this Court that at the stage of framing of charge, law is settled that trial court has to see whether prima

facie case is made out or not and in the present case, it is admitted case of petitioner that mobile no. 9771400857 belongs to him, but during course of investigation onus of alleged act of sending the name, address and photographs of the victim, has been taken by Tarkeshwar Rai co-accused in the present case, who is Secretary of the petitioner.

Learned counsel for the State further pointed out that transmission of above said information including photographs of the victim is also not in dispute, as such, absolutely prima facie case is made out against the petitioner and this Court should not interfere with the impugned order passed by learned trial court.

10. Heard both the sides and perused the case record. Before advertng to the facts of the case, it is appropriate for this Court to discuss the provisions under which F.I.R. got registered and charge has been framed i.e. Sections 228-A of IPC, Section 74 (1) (3) of Juvenile Justice Act, 2015 and Section 23 of P.O.C.S.O. Act, 2012, which is quoted as herein under for the ready reference:

**Section 228 A of the IPC**

***“S. 228 A. Disclosure of identity of the victim of certain offences, etc.-***

*(1)Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an [offence under Section 376, [Section 376-A, Section 376-AB, Section 376-B, Section 376-C, Section 376-D, Section 376-DA, Section 376-DB] or Section 376-E] is alleged or found to have been committed (hereafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.*

*(2) Nothing in sub-section (1) extends to any printing or publication of the name or any matter which may make known the identity of the victim if such printing or publication is—*

*(a) by or under the order in writing of the officer-in-charge of the police station or the police-officer making the investigation into such offence acting in good faith for the purposes of such investigation; or*

(b) by, or with the authorisation in writing of, the victim; or  
(c) where the victim is dead or minor or of unsound mind, by, or with the authorisation in writing of, the next of kin of the victim:

*Provided that no such authorisation shall be given by the next of kin to anybody other than the chairman or the secretary, by whatever name called, of any recognised welfare institution or organisation.*

*Explanation. —For the purposes of this sub-section, “recognised welfare institution or organisation” means a social welfare institution or organisation recognised in this behalf by the Central or State Government.*

(3) Whoever prints or publishes any matter in relation to any proceeding before a court with respect to an offence referred to in sub-section (1) without the previous permission of such court shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

*Explanation. —The printing or publication of the judgment of any High Court or the Supreme Court does not amount to an offence within the meaning of this section.] ”*

#### **Section 74 of the Juvenile Justice (Care and Protection of Children) Act, 2015**

##### ***“S. 74 - Prohibition on disclosure of identity of children:***

*1) No report in any newspaper, magazine, news-sheet or audio-visual media or other forms of communication regarding any inquiry or investigation or judicial procedure, shall disclose the name, address or school or any other particular, which may lead to the identification of a child in conflict with law or a child in need of care and protection or a child victim or witness of a crime, involved in such matter, under any other law for the time being in force, nor shall the picture of any such child be published:*

*Provided that for reasons to be recorded in writing, the Board or Committee, as the case may be, holding the inquiry may permit such disclosure, if in its opinion such disclosure is in the best interest of the child.*

*(2) The Police shall not disclose any record of the child for the purpose of character certificate or otherwise [in the pending case or in the case which] has been closed or disposed of.*

*(3) Any person contravening the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to six months or fine which may extend to two lakh rupees or both.”*

#### **Section 23 of the Protection of Children from Sexual Offences Act, 2012.**

##### ***“S. 23 Procedure for Media:***

*(1) No person shall make any report or present comments on any child from any form of media or studio or photographic facilities without having complete and authentic information, which may have the effect of lowering his reputation or infringing upon his privacy.*

*(2) No reports in any media shall disclose, the identity of a child including his name, address, photograph, family details, school,*

*neighbourhood or any other particulars which may lead to disclosure of identity of the child:*

*Provided that for reasons to be recorded in writing, the Special Court, competent to try the case under the Act, may permit such disclosure, if in its opinion such disclosure is in the interest of the child.*

*(3) The publisher or owner of the media or studio or photographic facilities shall be jointly and severally liable for the acts and omissions of his employee.*

*(4) Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall be liable to be punished with imprisonment of either description for a period which shall not be less than six months but which may extend to one year or with fine or with both.”*

11. From bare perusal of Section 228-A of IPC, it is very much clear that it prohibits the printing or publishing “the name or any matter which may make known the identity of the person”. It is obvious that not only the publication of the name of the victim is prohibited but also the disclosure of any other matter which may make known the identity of such victim. The phrase “matter which may make known the identity of the person” does not solely mean that only the name of the victim should not be disclosed but it also means that the identity of the victim should not be discernible from any matter published in the media.

Section 228 A of IPC further reflects the intention of the law-makers that the victim of such offences should not be identifiable, so that they do not face any hostile discrimination or harassment in the future.

Section 23 of the POCSO Act specifically prohibits disclosure of identity of a child in any manner. The intention of the legislature is that the identity of a child should not be disclosed directly or indirectly and the privacy and the reputation of the child should not be harmed. Any particular which may lead to the identification of a child cannot be disclosed in any form of media or studio or photographic facilities. Any

person committing breach of the said requirement of law shall be prosecuted in terms of Section 23(4) of the said Act.

Whereas, Section 74 (1) of the Juvenile Justice (Care and Protection of Children) Act, 2015 also prohibits the disclosure of the name, address or school or any other particulars of a child victim in any newspaper, magazine, news-sheet or audio-visual media or other forms of communication, whose violation is punishable under section 74(3) of the Act, limited to some exception which is provided under sub section (1) of the Act.

**12.** Now coming to the facts of the present case, it transpires that victim (just 4 years of age) was allegedly ravished, for which FIR being Karmatand P.S. Case No.128/2018 has been got registered under Section 376 of the IPC and Section 4 of POCSO Act. Victim got admitted in the Sadar Hospital, Jamtara at 9.30 P.M., on 27.10.2018 for her treatment and on the next date, i.e. on 28.10.2018 at 3 P.M., the petitioner, an M.L.A. of the area along with his supporters visited the Hospital to show sympathy with the victim and her family and in between, allegedly photographs of victim was taken by petitioner and a report stating the incident and effort taken by the petitioner- being an M.L.A. for securing justice to the victim, sent to the media as well as got viral in social media.

**13.** At this stage, few lines of the contents of the message required to be noted below for proper appreciation of the matter.

*“Culprit should be immediately hanged- Irfan Ansari (petitioner herein).*

*On the shameful incident in the State of Jharkhand, Hon’ble M.L.A.- Dr. Irfan Ansari reached to Hospital and met with victim, aged 4 years.*



***Name of victim (divulged), daughter of (also divulged) .....***

*Name of village and police station (divulged) where incident took place and the name of accused has also been divulged in the above said message.”*

**14.** Resultantly, FIR being Jamtara P.S. Case No. 175/18 dated 05.11.2018 against the petitioner under Sections 228 (A), 120 B of the IPC, Section 74 (1) (3) of Juvenile Justice Act, 2015 and Section 23 of POCSO Act, 2012 has been got registered.

**15.** Statement of number of witnesses got recorded during course of investigation including both the doctors i.e. namely, Dr. Subodh Kumar and Dr. Manjula Murmu. Witness Dr. Manjula Murmu who treated the victim has corroborated the case of prosecution by saying that petitioner along with his supporters came to Hospital in the evening of 28.10.2018 and this witness was about to discharge the victim, in between, petitioner visited along with his supporters to show sympathy to the victim and name, address of the victim was taken and photograph got snapped and later on, she came across the fact that name, address of victim and photographs were sent to media and other organization.

Similar statement has been made by the ASI- Pravesh Singh and female Hawaldar- Basanti Soren, who brought the victim to the Hospital for the purpose of treatment. Even four Police Constables namely, Punam Kumari, Mita Mukherjee, Babita Devi and Pratima Khalkho have also stated similar statement before the I.O. Even father and mother of the victim has also categorically stated in their respective statement that this petitioner asked the name of the victim and took photographs of the victim and her mother in the Hospital. Thereafter, they came across the fact that

above said photographs were sent to media and other places and photo got viral.

16. From para 38 of the case diary, it transpires that I.O has come across the fact that from mobile no. 9771400857 at 18.23 in the evening, 4 photographs and messages were posted but after sometime, photos got deleted but contents of the messages remained there.

17. Case diary further reveals that I.O. has recorded the statement of co-accused Tarkeshwar Rai, who admitted the case of prosecution but had fasten the liability on his shoulder by stating that he had forwarded the messages and photographs on account of lack of knowledge, and there is no role of M.L.A.-Dr. Irfan Ansari (petitioner herein) and to this effect one affidavit has also been produced before the I.O. The Present petitioner also filed an affidavit wherein he has admitted that the said mobile number belongs to him and apart from that he is having two other mobile numbers but he does not use the above said mobile numbers and his secretary uses the aforesaid mobile numbers and on account of lack of knowledge, the said message went viral in social media and other media.

18. Further, I.O. has also recorded the statement of one witness, namely Suman Bhattacharya at para 73 of the case diary who has stated that he has started '*whatsapp news group*' in the name of "***Nala news***" in the year 2016 in which number of representatives of the district, administrative and police officials, intellectuals and reporters were added as a member and at that time he was connected with Zee media and at present this witness is active reporter of "News flash the face of India".

This witness has categorically stated in his statement that on 28.10.2018 from mobile number 9771400857 which is saved in the name

of M.L.A.-Dr. Irfan Ansari, photographs of one teenage girl and connected messages were posted and after going through the post, he came across the fact that the said teenage girl was victim of rape and her name was also written in the message. Thereafter, other members of the group and admins started making comments, then M.L.A.-Dr. Irfan Ansari got the messages deleted. He further stated that he and other admins used to forbid from sending such type of messages in the group and he also warned the petitioner that in future, if such acts would be done, then petitioner's number would be removed from the group.

19. It is apposite for this Court to have a glance into the literal meaning of the term 'Media' and 'Social media'. As per Black's Law Dictionary the above-stated meaning thus read as follows:

**Media-** *Collectively, the means of mass communication; specif., television, radio, newspapers, magazines, and the Internet regarded together. - Also termed mass media.*

*"Mass media signifies the means by which communications – either factual or fictional- are transmitted to a mass audience through a variety of printing or audio-visual technologies. The purposes of communication have always remained the same: artists wish to entertain and stimulate; entrepreneurs aim to make money; governments and interest groups hope to inform or persuade; advertisers help to sell goods and ideas."*

**Social media.** *Collectively, all the technological means, esp. websites and apps, that enable people to participate in Internet content creation and online social networking.*

It is transparent from the aforesaid reference that the meaning of media includes the means of mass communication and mass media along with the Internet, as social media includes all the technological means especially websites and apps.

20. This Court under the revisional jurisdictions has to examine the correctness, legality or propriety of the order tabled before it, since, the

charge against the petitioner has been framed by the learned trial court, this Court while examining the propriety of the order, has to consider whether prima facie case has been made out or not and the court concerned, while framing of charges has looked into availability of the ingredients of offence or not.

21. The Hon'ble Apex Court in the case of **State of Maharashtra v. Som Nath Thapa** reported in (1996) 4 SCC 659 has held that while framing of charge, the court has to prima facie look into the material brought on record which would reasonably connect the accused with the crime and a charge can be framed against the accused for committing an offence, if prima facie the Court is of the opinion that the accused has committed the said offence and the case against him exists. The relevant paragraph is quoted herein under:

*“29. What was stated in this regard in Stree Atyachar Virodhi Parishad case [Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia, (1989) 1 SCC 715 : 1989 SCC (Cri) 285] which was quoted with approval in paragraph 78 of State of W.B. v. Mohd. Khalid [(1995) 1 SCC 684 : 1995 SCC (Cri) 226] is that what the court has to see, while considering the question of framing the charge, is whether the material brought on record would reasonably connect the accused with the crime. No more is required to be inquired into.*

*30. In Antulay case [(1986) 2 SCC 716 : 1986 SCC (Cri) 256] Bhagwati, C.J., opined, after noting the difference in the language of the three pairs of sections, that despite the difference there is no scope for doubt that at the stage at which the court is required to consider the question of framing of charge, the test of “prima facie” case has to be applied. According to Shri Jethmalani, a prima facie case can be said to have been made out when the evidence, unless rebutted, would make the accused liable to conviction. In our view, a better and clearer statement of law would be that if there is ground for presuming that the accused has committed the offence, a court can justifiably say that a prima facie case against him exists, and so, frame a charge against him for committing that offence.”*

22. Also, in the case of **Amit Kapoor v. Ramesh Chander** reported in (2012) 9 SCC 460, it has been categorically laid down by the Hon'ble Apex Court that if it appears to the Court that there is a ground for

presuming that the accused has committed an offence and the facts and ingredients of the Section exists for an offence, then it would proceed against the accused and frame the charge accordingly. It is also evident that at the initial stage during framing of charge, if there exists strong suspicion by the Court that the accused has committed an offence, then it is not open to the Court to neglect the facts and material available on record and say that there is no sufficient ground for proceeding against the accused.

It was also held that it is not obligatory for the Court at this stage to consider any detail and weigh in a sensitive balance whether the facts, if approved, would be incompatible with the innocence of the accused or not.

Relevant paragraph of the judgement is quoted herein under:

*“17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the “record of the case” and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion, there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the section exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is the expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.*

*18. It may also be noticed that the revisional jurisdiction exercised by the High Court is in a way final and no inter court remedy is available in such cases. Of course, it may be subject to jurisdiction of this Court under Article 136 of the Constitution of India. Normally, a revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the court. Merely an apprehension or suspicion of the same would not be a sufficient ground for interference in such cases.*

*19. At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused*

*has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage. We may refer to the well-settled law laid down by this Court in State of Bihar v. Ramesh Singh [(1977) 4 SCC 39 : 1977 SCC (Cri) 533] : (SCC pp. 41-42, para 4)*

*“4. Under Section 226 of the Code while opening the case for the prosecution the Prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under Section 227 or Section 228 of the Code. If ‘the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing’, as enjoined by Section 227. If, on the other hand, ‘the Judge is of opinion that there is ground for presuming that the accused has committed an offence which— ... (b) is exclusively triable by the court, he shall frame in writing a charge against the accused’, as provided in Section 228. Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a*

*situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227.”*

*20. The jurisdiction of the court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression “prevent abuse of process of any court or otherwise to secure the ends of justice”, the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily.”*

23. Further, the Hon’ble Apex Court in the case of ***Nipun Saxena v. Union of India***, reported in **(2019) 2 SCC 703** has set out the guidelines with regard to non-disclosure of name, identity and particulars of the victims of rape or sexual offences. The Hon’ble Court has further held that disclosure of name of the victim or even in a remote manner disclose any facts which can lead to the victim being identified and which should make her identity known to the public at large, in any form i.e. print or publish in print, electronic, social media, etc., is an offence. Relevant paragraph of the judgement is quoted herein under:

*“50.1. No person can print or publish in print, electronic, social media, etc. the name of the victim or even in a remote manner disclose any facts which can lead to the victim being identified and which should make her identity known to the public at large.*

*(emphasis supplied)”*

24. In the light of the above legal positions, perusal of the above stated Sections and the meaning of *media*, discussed herein above, this Court is of considered view that revisional court has to examine the correctness, legality or propriety of an order tabled before it and the court concerned while the framing of charges has prima facie to look into the ingredients of offence and facts along with the material brought on record. It is also settled from the above legal proposition that disclosure of name of the

victim or even in a remote manner disclose any facts which can lead to the victim being identified and which should make her identity known to the public at large, in any form i.e. print or publish in print, electronic, social media, etc., is strictly prohibited and is an offence.

**25.** On the basis of above discussion and looking into the ingredients of Sections, this Court is of considered view that a prima facie case is made out under Section 228 A of IPC on account of fact that it is admitted case of petitioner, also that report/messages and photographs of the victim got forwarded to social media platform and this fact further got corroborated from the mouth of witness, Suman Bhattacharya who has categorically stated that he has started '*whatsapp*' news group in the name of "*Nala news*" in the year 2016 in which number of representative of the district, administrative and police officials, intellectual and reporters were added as a member and at that time he was connected with Zee media and at present this witness is active reporter of "News flash the face of India". It is also evident from the statement made by Suman Bhattacharya to the I.O. that the photographs of one teenage girl and connected message was posted in the above-said news *whatsapp* group from the petitioner's number, through which he came across the fact that the teenage girl was victim of rape and her name was disclosed by that message. Thus, prima facie it shows somehow the involvement of the petitioner in disclosing the identity including the photographs of the victim over the social media via *whatsapp*.

**26.** Also, the mother and father of the victim has stated that it is the petitioner who asked the name of the victim and had taken photographs which is admittedly forwarded from the mobile number of the petitioner to



the members where numbers of persons read the contents and see the photographs of the victim and it is trite law that criminal liability is not transferable in nature, however it may be joint. During course of investigation by accepting the fact by the co-accused namely, Tarkeshwar Rai that he has sent the messages and photographs himself from the mobile number of petitioner, criminal liability cannot and should not be transferred at this stage and even for examining this aspect, for proper appreciation of fact, trial is required.

**27.** As far as Section 23 of POCSO Act, 2012 and Section 74 (1) (3) of Juvenile Justice Act, 2015 are concerned, the ingredients of both the sections with the above stated facts and discussion, clearly shows that prima facie *Whats App* news group in the name of “Nala News” in which message regarding identity of victim and her photograph were sent, would come within the domain of “any form of media” & “audio-visual media”.

**28.** Under the aforesaid facts and circumstance of the case, this Court is of the considered view that no interference is required in the order dated 25.07.2022, passed by learned Additional Sessions Judge-III, Dumka and the charges framed vide order dated 21.11.2022 by the learned Additional Sessions Judge-III,-cum-Spl. Judge, Dumka, in Special POCSO Case No. 47 of 2021, arising out of Jamtara P.S. Case No. 175 of 2018.

**29.** Before parting with the order is made clear that the findings so recorded by this Court are stated only for the purpose of the instant case and as such the trial will not be prejudiced by any of the findings and observations made by this Court, during the trial.

**30.** Accordingly, the instant Cr. Revision No. 1254 of 2022 stands dismissed.

**31.** Let a copy of this order be communicated through 'FAX' to the Court concerned.

**(Arun Kumar Rai, J.)**

Pramanik/ **A.F.R**