

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
(FROM THE OFFICIAL CHAMBERS VIA VIDEO APPLICATION)**

**Criminal Writ Jurisdiction Case No.394 of 2020**

Arising Out of PS. Case No.-273 Year-2020 Thana- PATLIPUTRA District- Patna

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Gopal Gupta, S/o Bhagwan Saw, R/o Mohalla- Mainpura Bagicha in the house of Tinku, Near LCT Ghat, P.S.-Patliputra, District- Patna

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Deptt. of Home, Govt. Of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Inspector General of Police, Darbhanga Range, Darbhanga.
4. The Inspector General of Police, Central Range, Patna.
5. The Senior Superintendent of Police, Patna.
6. The Senior Superintendent of Police, Darbhanga.
7. The District Magistrate, Patna.
8. The District Magistrate, Darbhanga.
9. The Officer-in-Charge, P.S.-Patliputra, Patna.
10. The Officer-in-Charge, P.S.-Kewati, Darbhanga.

... .. Respondents 1<sup>st</sup> Set

11. SinkuYadav, S/o BechanYadav, R/o village- Koila Sthan, Dehri Chowk, P.S.-Kewati, District- Darbhanga.
12. Bechan Yadav, Father of Sinku Yadav, R/o village- Koila Sthan, Dehri Chowk, P.S.-Kewati, District- Darbhanga.
13. Veena Devi, Mother of Sinku Yadav, R/o village- Koila Sthan, Dehri Chowk, P.S.- Kewati, District- Darbhanga

... .. Respondents 2<sup>nd</sup> Set

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**Appearance :**

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| For the Petitioner/s | : | Mr.Vikash Kumar Pankaj, Advocate<br>Mr.Ashutosh Singh, <i>Amicus Curiae</i> |
| For the Respondent/s | : | Mr.P.N.Sharma, AC to AG   |

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**CORAM: HONOURABLE THE CHIEF JUSTICE**

**and**

**HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

**Date : 24-03-2021**

This writ application was filed initially praying for issuance of a writ in the nature of a writ of habeas corpus commanding the



respondents 2<sup>nd</sup> set to release the petitioner's minor daughter who was allegedly kept in illegal detention by the respondents 2<sup>nd</sup> set. A prayer was made to direct the official respondents/respondent 1<sup>st</sup> set to produce the victim girl before this Court.

2. The writ application was taken up for consideration on 14.12.2020. This Court noticed that the petitioner had instituted the First Information Report ('FIR') giving rise to Patliputra P.S. Case No. 273 of 2020 dated 01.08.2020 under Section 366A of the Indian Penal Code. The age of the victim girl was disclosed as about 16 years. Having found that after registration of the FIR, neither the victim girl had been recovered nor any other development had taken place, this Court called upon the Senior Superintendent of Police, Patna to submit a report to this Court with regard to the progress made in the case. A direction was also issued to record the statement of the victim girl by a woman police officer authorized by the Senior Superintendent of Police, Patna if not already recorded under Section 164 Cr.P.C.

3. On 18.12.2020, this Court while adjourning the matter to 22.12.2020 expected the respondents to take all steps for tracing out the missing girl. The Senior Superintendent of Police was also directed to remain present through virtual mode. On 23.12.2020, the police officer interacted with the court whereupon this Court directed him to file an affidavit indicating all the events which took place right from the time of the registration of the First Information Report.



4. Thereafter, a counter affidavit came to be filed on behalf of the official respondents. It has been sworn by the Senior Superintendent of Police, Patna. After narrating the facts as regards the registration of the FIR, it is stated in the counter affidavit that the I.O. acted swiftly in the matter and obtained a warrant of arrest against the absconding accused, the same was sent to the S.H.O., Kewati police station (Darbhanga) through Whatsapp. On secret information, the police party conducted a raid at the house of one Umesh Sah, in Indira Colony, Durga Mandir, P.S. Bahadurpur, Darbhanga where the accused and the victim girl were found present. The police arrested the FIR named accused and recovered the victim girl. It is stated that she was kept in safe custody of two lady constables.

5. The counter affidavit further provides the details in paragraphs '24', '25', '26', '27' and '28'. According to the statements made in these paragraphs, the victim girl was brought to Patliputra Police Station, Patna at 05:00 P.M. on 20.12.2020. She was kept in safe custody of lady constables. She was taken to Mahilla Police Station for recording her statement before a lady officer. Thereafter, she was brought back to Patliputra Police Station and was kept there. On 21.12.2020, police proceeded to file a requisition for recording the statement of the victim girl and such requisition was filed before the learned A.C.J.M. XII, Patna. The statement of the victim girl was recorded. A copy of the same has been placed on record. A perusal of the statement under Section 164 of the Code of Criminal Procedure



(hereinafter referred to as the 'Cr.P.C.')

would disclose that the victim girl has disclosed that she had gone with the accused because of the ill-treatment meted out to her by her parents. She expressed her desire to go with her parents but at the same time expressed apprehension that they may kill her.

6. According to the statements made in the counter affidavit, the investigating officer of the case filed requisition before the learned Court for grant of permission to get the victim medically examined. After getting permission, the police along with lady constables proceeded from learned court for the medical examination but due to the delay, the medical examination could not be done. Thereafter the police brought the victim girl to Patliputra police station where she was made to stay. On 22.12.2020, the victim girl was taken to Gardanibagh Hospital for medical examination. She was examined there and then the doctor provided the examination report along with an order in a sealed envelope and sent her to Patna Medical College & Hospital ( In short 'P.M.C.H. '), Patna for lab examination. After her departure from Gardanibagh Hospital, the victim girl was brought to P.M.C.H., Patna at 02:45 P.M. for X-ray but the Head of the Department informed the police that the X-ray time is over as it was more than 02:00 P.M. On that day, the X-ray could not be done. Thereafter the victim girl was taken for a passport size photograph, she was photographed and was brought back to the Microbiology Department P.M.C.H., Patna where Dr. B.N. Prasad received photograph of the girl, copy of the FIR of the



case and sealed envelope provided by the Gardanibagh Hospital and after completion of the process again the victim girl was taken to Patliputra Police Station at 05:00 P.M. Since the medical examination was not completely done on that day, she was again kept in the police station.

7. On 23.12.2020, she was brought to P.M.C.H., Patna for medical examination. Her X-ray was done and after completion of the process she was brought to the learned court where requisition was filed by the I.O. with a request to learned court to decide the place of residence of the victim girl. On 23.12.2020, the victim girl was handed over to her parents which is evident from Annexure 'B' to the counter affidavit of the respondents.

8. At this stage, this Court has been informed by learned counsel for the petitioner that the victim girl has once again eloped and she is presently living in the house of the accused. Having noticed that the petitioner has already lodged a First Information Report, the victim girl was recovered pursuant thereto but once again eloped during the pendency of the writ application and the whereabouts of the victim girl is now well known to the petitioner, this Court would have simply closed the matter in the present proceeding. In the given facts and circumstances, now the Police has to take the case to its' logical end. The petitioner has remedies available to him for proper investigation of the case.



9. We are, however, not willing to simply close the matter because being a Constitutional Court, we cannot be oblivious to the certain issues which have been noticed in course of hearing of this case.

10. This Court feels disturbed on finding that there is a blatant disregard to the specific provisions of law as regards treatment required to be given to a 'child' who is victim of a crime. No doubt, the FIR was registered under Section 366A of the Indian Penal Code but the fact remains that the victim is a 'child' within the meaning of the Juvenile Justice (Care & Protection of Children) Act, 2015 (hereinafter referred to as the 'J.J. Act'). A careful reading of the definition of the words "Child in need of care and protection" under the J. J. Act would show that the victim girl in this case would be covered under the said definition. This Court would extract the definition of the word "Child in need of care and protection" as contained under Section 2(14) of the J. J. Act hereunder:-

“(14) ***“child in need of care and protection”*** means a child—

(i) who is found without any home or settled place of abode and without any ostensible means of subsistence;

or (ii) who is found working in contravention of labour laws for the time being in force or is found begging, or living on the street; or

(iii) who resides with a person (whether a guardian of the child or not) and such person—

(a) has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child; or



(b) has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or

(c) has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person; or

(iv) who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or having parents or guardians unfit to take care, if found so by the Board or the Committee; or

(v) who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or

(vi) who does not have parents and no one is willing to take care of, or whose parents have abandoned or surrendered him; or

(vii) who is missing or run away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed; or

(viii) who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts; or

(ix) who is found vulnerable and is likely to be inducted into drug abuse or trafficking; or

(x) who is being or is likely to be abused for unconscionable gains; or

(xi) who is victim of or affected by any armed conflict, civil unrest or natural calamity; or

(xii) who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnisation of such marriage;”



11. The victim girl, when produced before the learned Judicial Magistrate for her statement under Section 164 Cr.P.C. disclosed that she had gone with the accused because of the ill-treatment meted out to her by her parents. She further made a statement that on 22<sup>nd</sup> June, 2020 her father had beaten her and she was asked to leave the house, she has further made statements that after being beaten by her father she took Rs. 500/- and went to Darbhanga where she married with the accused in a temple. Thus, it is not a case of only torture for compelling the victim girl to solemnize a marriage with a person of the choice of her father, according to her, she was also at imminent risk of marriage before attaining the age of marriage and her parents were likely to be responsible for the same. In the facts of this case, prima-facie the accused will come within the meaning of word 'any other person' under sub-clause (xii) of clause 14 of Section 2 who is responsible for the solemnization of marriage as has been claimed by the victim who has still not attained the age of marriage. As she was found residing with the accused, prima-facie, in terms of sub-clause (iii) of Clause 14 of Section 2 of the J. J. Act it may be observed that she was residing with a person who has exploited the child. This Court would, however, hasten to add that the observations of this Court while considering the present case is only prima-facie as appearing from the records and such observations are not to be taken as any opinion of this Court as to the guilt of the accused.



**12.** This Court having taken a prima-facie view that the child in this case is ‘a child in need of care and protection’ would proceed to consider further, the safeguards which are provided to such child in the matter of his/her production before the statutory committee or the court, as the case may be.

**13.** In the case of ‘child in need of care and protection’ the J. J. Act devotes a separate chapter i.e. Chapter VI which deals with the procedure in relation to children in need of care and protection. Section 31 provides that any child in need of care and protection may be produced before the Committee by any of the persons, namely:— (i) any police officer or special juvenile police unit or a designated Child Welfare Police Officer or any officer of District Child Protection Unit or inspector appointed under any labour law for the time being in force; (ii) any public servant; (iii) Child line Services or any voluntary or non-governmental organisation or any agency as may be recognised by the State Government; (iv) Child Welfare Officer or probation officer; (v) any social worker or a public spirited citizen; (vi) by the child himself; or (vii) any nurse, doctor or management of a nursing home, hospital or maternity home. Proviso of sub-Section (i) of Section 31 says that the child shall be produced before the Committee without any loss of time but within a period of twenty-four hours excluding the time necessary for the journey.



**14.** The word “Committee” has been defined under Clause “22” of Section 2 of the J.J. Act which means Child Welfare Committee constituted under Section 27.

**15.** Section 32 makes it mandatory for any individual or a police officer or any functionary of any organisation or a nursing home or hospital or maternity home, who or which finds and takes charge, or is handed over a child who appears or claims to be abandoned or lost, or a child who appears or claims to be an orphan without family support, shall within twenty-four hours (excluding the time necessary for the journey), give information to the Childline Services or the nearest police station or to a Child Welfare Committee or to the District Child Protection Unit, or hand over the child to a child care institution registered under this Act, as the case may be. Non-reporting of the information as required under Section 32 makes it an offence by virtue of Section 33 and a penalty in terms of Section 34 of the J. J. Act may be inflicted upon any person who has committed the offence under Section 33 and an imprisonment up to six months or fine of ten thousand rupees or both may be imposed.

**16.** Section 36 talks of inquiry, on production of a child or receipt of a report under section 31, the Committee shall hold an inquiry in such manner prescribed, on its own or on the report from any person or agency under sub-Section (2) of Section 31 and the committee may pass an order to send the child to the children’s home or a fit facility or fit person, and for speedy social investigation by a social worker or a



Child Welfare Officer or Child Welfare Police Officer. The children below six years of age, who are orphan, surrendered or appeared to be abandoned shall be placed in a Specialised Adoption Agency, where available. The social investigation shall be completed within fifteen days so as to enable the Committee to pass final order within four months of first production of the child. According to sub-Section (3) of Section 36 after the completion of the inquiry, if Committee is of the opinion that the said child has no family or ostensible support or is in continued need of care and protection, it may send the child to a Specialised Adoption Agency if the child is below six years of age, children's home or to a fit facility or person or foster family, till suitable means of rehabilitation are found for the child, as may be prescribed, or till the child attains the age of eighteen years.

**17.** Section 37 talks of orders which may be passed by the Committee regarding a child in need of care and protection. This includes restoration of child to parents or guardian or family with or without supervision of Child Welfare Officer or designated social worker. A child in need of care and protection may also be placed in Children's Home or fit facility or Specialised Adoption Agency. Such decision may be taken in the cases where the family of the child cannot be traced or even traced, restoration of the child to the family is not in the best interest of the child.

**18.** According to Section 39, process of rehabilitation and social re-integration of children are to be undertaken, based on the



individual care plan of the child, preferably through family based care such as by restoration to family or guardian with or without supervision or sponsorship, or adoption or foster care. In terms of sub-Section (3) of Section 39 the children in need of care and protection who are not placed in families for any reason may be placed in an institution registered for such children under this Act or with a fit person or a fit facility, on a temporary or long-term basis, and the process of rehabilitation and social integration shall be undertaken wherever the child is so placed.

**19.** At this stage Chapter IV of the Bihar Juvenile Justice (Care and Protection of Children) Rules 2017 (hereinafter referred to as the 'Bihar J.J. Rules') are required to be noticed. Rule 18 clearly provides that any child in need of care and protection shall be produced before the Committee during the working hours on its place of sitting and beyond working hours before the member as per the duty roster. Proviso to sub-rule (1) of Rule 18 says that where the child cannot be produced before the Committee, the Committee shall reach out to the child where the child is located. According to sub-rule (5) of Rule 18, the Committee or the member on duty shall issue the order for placing the child in Children's Home in Form 18. Sub-rule (6) of Rule 18 provides that the Committee or the member on duty shall order immediate medical examination of the child produced before the Committee or the member on duty, through the child care institution or the District Child Protection Unit, if such examination is needed. Sub-



rule (8) provides that the Committee may, while making an order in Form 19 for placing a child under the care of a parent, guardian or fit person, pending inquiry or at the time of restoration, as the case may be, direct such parent, guardian or fit person to enter into an undertaking in Form 20.

**20.** A reading of Rule 19 of Bihar J. J. Rules would show that it provides the procedure for inquiry into the circumstances under which the child is produced and then the Committee shall prima-facie determine the age of the child in order to ascertain its jurisdiction, pending further inquiry as per Section 94 of the J.J. Act, if needed be. The inquiry has to satisfy the basic principles of natural justice and shall ensure the informed participation of the child and the parent or guardian. The child has to be given an opportunity to be heard and his/her opinion shall be taken into consideration with due regard to his/her age and level of maturity. Sub-rule (6) of Rule 19 provides that the Committee shall interview the child sensitively and in a child friendly manner and will not use adversarial or accusatory words or words that adversely impact the dignity or self-esteem of the child. In terms of sub-rule (7) of Rule 19, the Committee shall satisfy itself through the documents and verification reports, before releasing or restoring the child as per Form 19, in the best interest of the child.

**21.** Chapter VIII of the Bihar J.J. Rules deals with the offences against children. Rule 54 provides that a complaint of an offence against a child may be made by child, family, guardian, friend



or teacher of the child, childline services or child welfare police officer or any police official or any other individual or institutions or organization concerned. In case of an information in respect of a cognizable offence against a child, the police shall register a first information report forthwith. All cases of offences against children are to be investigated by the Child Welfare Police Officer. Sub-rule (8) of Rule 54 says that in no case a child shall be placed in a police lock-up or lodged in a jail. Further the child and his family shall be provided access to paralegal volunteers under the District Legal Services Authority. An immediate need assessment of the child will be conducted by the Probation officer or the Child Welfare Officer or Case Worker or Social Worker in terms of the need for food, clothing, emergency medical care, counseling, psychological support and the same shall be immediately extended to the child. Sub-rule (11) of Rule 54 reads as under:-

“(11) Where a child has been subjected to sexual abuse, the child may be referred to the nearest District Hospital or One-Stop Crises Centre, as the case may be, if locally available, and shall be extended all kinds of support or assistance including psychological and legal assistance, as specified under the rules and guideline framed under the Protection of Children from Sexual offences Act, 2012.”

**22.** Sub-rule (13) of Rule 54 provides for the recording of the statement of child/victim under Section 164 Cr.P.C. in the children room or, if possible in the child's place or residence including, home or institution where he or she is residing. The statement may also be recorded by audio-visual means as per the provisions of sub-section (1)



of Section 164 of the Cr.P.C. According to this provision, the child may be accompanied by parent or guardian or social worker or counselor or any person who the child trusts.

**23.** Section 74 in Chapter IX of the J. J. Act prohibits disclosure of identity of the children and according to it 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 shall be published. By proviso of sub-section(1) of Section 74 it is 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. Under sub-section (2) of Section 74, the Police shall not disclose any record of the child for the purpose of character certificate or otherwise in cases where the case has been closed or disposed of. Sub-section (3) of Section 74 provides that 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.



**24.** Section 75 under Chapter IX provides punishment for cruelty to child. If this provision is read with Rule 55 of the Bihar J.J. Rules, giving the child in marriage shall be considered as cruelty to the child. On receipt of information of risk of a child being given in marriage, the police or any officer authorized under the Act or under the Prohibition of Child Marriage Act, 2006 shall produce the child before the Committee for appropriate directions and rehabilitative measures.

**25.** The entire discussions hereinabove would show that the J. J. Act and Rules framed thereunder have provided all safeguards to a child who is in need of care and protection. In the present case, however, this Court has noticed that after recovery of the victim girl and when she was brought to Patna on 20.12.2020, no effort was made by Police to produce her before the member of the Committee. She was kept in the Police Station. Not only that, on the next date instead of taking her to the office of the Child Welfare Committee, she was produced before the learned A.C.J.M. XII, Patna. Learned A.C.J.M., XII, Patna recorded her statement under Section 164 Cr.P.C. and on the request of the Investigating Officer allowed the victim girl to be taken away for medical examination. The victim girl was thereafter, again kept in the Police Station for next two days and nights and was produced only on 23.12.2020 when she disclosed to her parents without making any inquiry in terms of Rule 19 of the Bihar J.J. Rules.

**26.** An observance of the provisions of the Rule 19 of the Bihar J. J. Rules would have given an opportunity to the child to be



heard and with due regard to her age and other factors the Committee could have passed appropriate order in writing in terms of sub-rule (5) of Rule 19. There is nothing on the record to show that any interview of the victim girl or interaction with the victim girl was done to satisfy itself as to whether any offence has been committed against her so as to find out even prima-facie as to whether the child has been subjected to sexual abuse and she needs support and assistance psychologically and legally as specified under the Rules and guidelines framed under the Protection of Children from the Sexual Offences Act, 2012 (hereinafter referred to as the 'POCSO Act, 2012').

27. This Court would briefly refer some of the provisions of the POCSO Act, 2012 hereunder"-

**“24. Recording of statement of a child.**—(1) The statement of the child shall be recorded at the residence of the child or at a place where he usually resides or at the place of his choice and as far as practicable by a woman police officer not below the rank of sub-inspector.

(2) The police officer while recording the statement of the child shall not be in uniform.

(3) The police officer making the investigation, shall, while examining the child, ensure that at no point of time the child come in the contact in any way with the accused.

(4) No child shall be detained in the police station in the night for any reason.

(5) The police officer shall ensure that the identity of the child is protected from the public media, unless otherwise directed by the Special Court in the interest of the child.

**25. Recording of statement of a child by Magistrate.**—(1) If the statement of the child is being recorded under section 164 of the Code of Criminal Procedure, 1973 (2 of 1974)(herein referred to as the Code), the Magistrate recording such statement shall,



notwithstanding anything contained therein, record the statement as spoken by the child:

Provided that the provisions contained in the first proviso to subsection (1) of section 164 of the Code shall, so far it permits the presence of the advocate of the accused shall not apply in this case.

(2) The Magistrate shall provide to the child and his parents or his representative, a copy of the document specified under section 207 of the Code, upon the final report being filed by the police under section 173 of that Code.

**26. Additional provisions regarding statement to be recorded.**

—(1) The Magistrate or the police officer, as the case may be, shall record the statement as spoken by the child in the presence of the parents of the child or any other person in whom the child has trust or confidence.

(2) Wherever necessary, the Magistrate or the police officer, as the case may be, may take the assistance of a translator or an interpreter, having such qualifications, experience and on payment of such fees as may be prescribed, while recording the statement of the child.

(3) The Magistrate or the police officer, as the case may be, may, in the case of a child having a mental or physical disability, seek the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field, having such qualifications, experience and on payment of such fees as may be prescribed, to record the statement of the child.

(4) Wherever possible, the Magistrate or the police officer, as the case may be, shall ensure that the statement of the child is also recorded by audio-video electronic means.

**28.** On perusal of the various provisions of the POCSO Act, 2012 it would appear that a child has been defined under Section 2(d) means any person below the age of 18 years. According to Section 2 – “The words and expressions used herein and not defined but defined in the Indian Penal Code (45 of 1860), the Code of Criminal Procedure, 1973 (2 of 1974), the Juvenile Justice (Care and Protection of Children) Act, 2015 (02 of 2016) and the Information Technology Act, 2000 (21



of 2000) shall have the meanings respectively assigned to them in the said Codes or the Acts.”

29. What is required to be noticed from the various provisions of the POCSO Act, 2012 is that Chapter VI which deals with the procedures for recording the statement of the child contains under Sections 24 to 27. Section 27 clearly provides that the medical examination of a child in respect of whom any offence has been committed in this Act shall, notwithstanding that a First Information Report or complaint has not been registered for the offences under this Act, be conducted in accordance with section 164A of the Cr.P.C.

30. In the case of **Independent Thought Versus Union of India and Another** reported in (2017) 10 SCC 800 the Hon'ble Supreme Court was considering an issue of public importance as to whether sexual intercourse between a man and his wife being a girl between 15-18 years of age is rape? Exception 2 to Section 375 of the Indian Penal Code 1860 says that it is not to be treated as a case of rape but the Hon'ble Supreme Court expressed its opinion that sexual intercourse with a girl below 18 years of age is rape regardless of whether she is married or not. The Hon'ble Supreme Court has also considered the provisions of the Prohibition of Child Marriage Act, 2006 ('PCMA Act') and noticed that Section 9 of the PCMA provides that any male adult above 18 years of age marrying a child shall be punishable with rigorous imprisonment which may extend to two years or with a fine which may extend to one lakh rupees or with both. The



Hon'ble Supreme Court held that there is no real or material difference between the definition of "rape" in the terms of Section 375 IPC and "penetrative sexual assault" in the terms of Section 3 of the POCSO Act, 2012. The only difference is that the definition of rape is somewhat more elaborate and has two exceptions but the sum and substance of the two definitions is more or less the same and the punishment for being found guilty of committing the offence of rape is the same as for penetrative sexual assault.

**31.** We also understand that the learned A.C.J.M. XII, Patna should have ensured that the victim girl is duly produced before the Child Welfare Committee where appropriate order(s) could have been passed and inquiry held on all aspects.

**32.** This is where we remember the judgment of the Hon'ble Supreme Court in the case of **Prakash Singh & Ors. Vs. Union of India & Ors.** reported in **(2006) 8 SCC 1**. In the said case after referring to the opinions of the various Commissions, Committees and the National Human Rights Commission and its report dated 31<sup>st</sup> May, 2002, as regards the police reforms, the Hon'ble Supreme Court noted that besides the Home Minister, all the Commissions and the Committees broadly came to the same conclusion on the issue of urgent need for police reforms. Separation of investigation from law and order is one of the needs which is still required to be attended to.

**33.** We have yet to see formation of Special Police Unit with members who are involved in the investigation of the case is fully



aware of the statutory provisions and the judicial pronouncements on the subject. This case is another example in the series of cases which would show that what was required to be adhered to by police in terms of sub-section(4) of Section 24 and Section 27 of the POCSO Act, 2012 have not been taken care of.

**34.** In the case of **Sampurna Behura Vs. Union of India & Ors.** reported in **(2018) 4 SCC 433** the Hon'ble Supreme Court has issued various directions to the Ministry of Women and Child Development in the Government of India and the State Governments, National Commission for Protection of Child Rights ('NCPCR') and State Commission for Protection of Child Rights ('SCPCR'), State Level Child Protection Societies and the District Level Child Protection Units, the J.J.Bs etc. Paragraph 94.9 and 94.10 of the judgment reads as under:-

**“94.9.** It is important for the police to appreciate their role as the first responder on issues pertaining to the offences allegedly committed by children as well as the offences committed against children. There is therefore a need to set up meaningful Special Juvenile Police Units and appoint Child Welfare Police Officers in terms of the JJ Act at the earliest and not only on paper. In this context, it is necessary to clearly identify the duties and responsibilities of such units and officers and wherever necessary, guidance from the available expertise, either the National Police Academy or the Bureau of Police Research and Development or NGOs must be taken for the benefit of children.”

**“94.10.** The National Police Academy and State Police Academies must consider including child rights as a part of



their curriculum on a regular basis and not as an isolated or sporadic event.”

35. At this stage, thus, we are of the view that the time has come when no further delay be caused in abiding by the mandate of the Sections 106, 107 and 108 of the J. J. Act read with Rule 54 of the Bihar J.J. Rules. Sections 106, 107 and 108 of the J. J. Act are quoted hereunder for a ready reference:-

**“106.State Child Protection Society and District Child**

**Protection Unit.-** Every State Government shall constitute a Child Protection Society for the State and Child Protection Unit for every District, consisting of such officers and other employees as may be appointed by that Government, to take up matters relating to children with a view to ensure the implementation of this Act, including the establishment and maintenance of institutions under this Act, notification of competent authorities in relation to the children and their rehabilitation and co-ordination with various official and non-official agencies concerned and to discharge such other functions as may be prescribed.”

**“107.Child Welfare Police Officer and Special**

**Juvenile Police Unit.-** (1) In every police station, at least one officer, not below the rank of assistant sub-inspector, with aptitude, appropriate training and orientation may be designated as the child welfare police officer to exclusively deal with children either as victims or perpetrators, in co-ordination with the police, voluntary and non-governmental organisations.

(2) To co-ordinate all functions of police related to children, the State Government shall constitute Special Juvenile Police Units in each district and city, headed by a police officer not below the rank of a Deputy Superintendent of Police or above and consisting of all



police officers designated under sub-section (1) and two social workers having experience of working in the field of child welfare, of whom one shall be a woman.

(3) All police officers of the Special Juvenile Police Units shall be provided special training, especially at induction as child welfare police officer, to enable them to perform their functions more effectively.

(4) Special Juvenile Police Unit also includes Railway police dealing with children.”

**“108.Public awareness on provisions of Act.-** The Central Government and every State Government, shall take necessary measures to ensure that—

(a) the provisions of this Act are given wide publicity through media including television, radio and print media at regular intervals so as to make the general public, children and their parents or guardians aware of such provisions;

(b) the officers of the Central Government, State Government and other concerned, persons are imparted periodic training on the matters relating to the implementation of the provisions of this Act.”

**36.** The aforesaid provisions are to be read along with Rule 54 of the Bihar J. J. Rules. Sub-rule (4) of Rule 54 mandates that in all cases of offences against children, the investigation shall be conducted by a Child Welfare Police Officer. We, therefore, direct the State Government, Bihar to constitute Child Protection Society for the State and a Child Protection Unit for every district in terms of Section 106 of the J. J. Act. Similarly in every police station, at least, one officer, not below the rank of Assistant Sub-Inspector who has got aptitude and appropriate training and orientation be designated as the child welfare police officer to exclusively deal with children either as victims or



perpetrators, in co-ordination with the police, voluntary and non-governmental organisations.

**37.** In terms of Section 107 of the J. J. Act, Special Juvenile Police Unit in each district and city shall be headed by a Police officer not below the rank of Deputy Superintendent of Police or above and consisting of all police officers designated under sub-section (1) of Section 107 and two social workers having experience of working in the field of child welfare, of whom one shall be a woman.

**38.** In compliance of the mandate of sub-section (3) of Section 107 of the J. J. Act all police officers of the Special Juvenile Police Units should be provided special training, especially at induction as child welfare police officer, to enable them to perform their functions more effectively. The Special Juvenile Police Unit, includes Railway police dealing with children.

**39.** This Court directs that the State Government shall through its competent officers at the headquarter level and the district level must engage in sensitizing its' police force who are involved in the investigation of the cases and/or are likely to be involved in investigation of cases where victims are girls and child, special trainings are required to be provided to those police officers from time to time to make them acquainted with the provisions of law, rights and safeguards of the victim child. This Court, therefore, directs the Director General of Police (DGP), Bihar to ensure trainings to the respective members of police force who are involved in investigation of



the cases involving crime against child. Such trainings may also be arranged in consultation with the Bihar State Legal Services Authority.

**40.** Similarly the Director, Bihar Judicial Academy shall arrange training classes for the judicial officers at all levels to sensitize them with the subject and the laws relating to crime against child and the procedures required to be followed in such cases. There should be continuous effort to ensure that the police officers as well as the Judicial officers who are dealing with these kind of cases at the ground level are well aware of the legal provisions contained in the various special statutes dealing with the crime against child.

**41.** Before we part with this judgment, it is made clear that any observations made hereinabove would not reflect against or prejudice the rights and contentions of the either parties.

**42.** We dispose of the writ application accordingly.

**(Sanjay Karol, CJ)**

**( Rajeev Ranjan Prasad, J)**

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| <b>AFR/NAFR</b>          | AFR        |
| <b>CAV DATE</b>          |            |
| <b>Uploading Date</b>    | 05.04.2021 |
| <b>Transmission Date</b> | 05.04.2021 |

Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

