

IN THE HIGH COURT OF JHARKHAND AT RANCHI  
W.P(Cri.) No.236 of 2018

Md. Uzair Aftab

. . . . .Petitioner.

Versus

State of Jharkhand & Ors.

..... Opp.parties.

**CORAM: HON'BLE MR. JUSTICE AMITAV K. GUPTA**

For the Petitioner

: Mr.Alok Anand, Advocate.

For the State

: Mr. Gautam Kumar, S.C.-I(Mines).

**04/30.04.2019**

1. Having heard the learned counsel appearing for the petitioner and the learned counsel for the State, it transpires that the court of Addl. Judicial Commissioner-I, Ranchi, by order dated 07.05.2018 in POCSO Case no.44/2018(arising out of Daily Market P.S.Case no.19 of 2018, has rejected the prayer for recording of the statement of the victim, Md. Uzair Aftab, under Section 164 Cr.P.C. on the ground and for the reason that the victim was unable to give any intelligible reply to the questions asked by the Additional Judicial Commissioner.

At this juncture, it is pertinent to note that the mother of the child had lodged the case, on the basis of the disclosure made by the child to her and the police had recorded the statement of the victim boy in course of investigation.

2. The question arises whether the rejection of the prayer for recording of the statement of the child, under Section 164 Cr.P.C is in accordance to the scheme of the Act. In this context it will be profitable to refer to the relevant provisions of Protection of Children from Sexual Offences Act, 2012. It is evident that Chapter VI of the Act lays down the procedure for recording the statement of a child(victim), as stipulated in Sections 24 and 25, which read as under:

**“Section 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

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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.

**Section 25. Recording of statement of a child by Magistrate.-**

(1) If the statement of the child is being recorded under Section 164 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 sub-section (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.”

3. The above extracted provisions of POCSO Act amply establish that the law contemplates recording of the statement of a child victim only by police officer under Section 24 of the Act and/or the Magistrate under Section 25 of the Act and not that by any other authority. In Section 25 of the Act legislature has carefully set down the manner in which the statement of child victim

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is to be recorded under section 164 Cr.P.C by the Magistrate. Sections 24 and 25 of the Act specify the manner and the place of recording of the statement.

4. The Supreme Court in the case of **Ramachandra Keshav Adke vs. Govind Joti Chavara and ors.; AIR 1975 SC 915** has held that where law prescribes the manner in which an act has to be performed, it has to be performed in that manner or not at all. Therefore, any exercise of power, especially which impacts valuable rights of a person can be effected only after strict compliance of the statutory provisions.

5. It is apparent that the Additional Judicial Commissioner-I, Ranchi without looking into the provisions of law has put questions to the victim child for determining and forming an opinion as to whether the child was capable and competent to make any intelligible statement.

6. For the foregoing reasons and considering the gravity of the allegation narrated in the F.I.R the order of the Addl. Judicial Commissioner rejecting the prayer for recording the statement of the child under Section 164 Cr.P.c, is, hereby, set aside. The Investigating Officer shall produce the child accompanied by his mother before the learned Judicial Commissioner, Ranchi on 26.05.2019, who shall pass necessary order for recording the statement of the child under Section 164 Cr.P.C by a Magistrate, preferably a lady Magistrate, in terms of the provision of Section 25 of the Act. The process to be completed preferably by 28.06.2019.

7. Learned S.C.I shall apprise this Court regarding the status and progress of the investigation in the case.

8. Office to list this case on 03.07.2019.

**(Amitav K. Gupta, J.)**

*Biswas.*