

THE HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

Criminal Revision Petition.84 of 2011

Shri Birendra Sarkar,
S/o Shri Biraj Sarkar, Resident of Solanala,
P.O & P.S. Pecharthal, District - North Tripura.

..... *Petitioner.*

-Vs -

1. **The State of Tripura**
(Represented by the Secretary-Cum-Commissioner),
Department of Home, Government of Tripura,
P.O. Agartala, P.S. West Agartala,
District - West Tripura.

2. **Sri Kamal Chakma,**
S/o Sri Kamala Ranjan Chakma,
P.O Nalkata, Gatcherra,
P.S. Pecharthal, Dist. - West Tripura.

..... *Respondents.*

_B_E_F_O_R_E_

THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

For the petitioner : Mr. Nepal Majumder, Advocate.

For

Respondent No.1 : Mr. R C Debnath, Addl. P.P.

Respondent No.2 : None.

Date of hearing & judgment : 01.7.2015.

Whether fit for reporting :

Yes	No
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JUDGMENT & ORDER(ORAL)

This criminal revision petition is directed against the order dated 9th November, 2011 passed by the learned Assistant Sessions Judge, Dharmanagar, North Tripura in Case No.ST.15(NT/D) 2011 whereby he rejected the application of the petitioner filed under Section 227 Cr.P.C that no case was made out.

2. This petition has been filed even before the charge was framed. Section 227 of Cr.P.C gives a power to the Court to discharge an accused where the Judge feels that even on the material on record there is no sufficient ground for proceeding against the accused otherwise charge has to be framed under Section 228.

3. The case of the prosecution is that Lt. Smt. Dharani Rani Chakma was raped by the accused on 12.8.2010. The case of the informant who is the son of Lt. Smt. Dharani Rani Chakma is that on 12.8.2010 his mother went out and next day they found his mother in a naked condition. She remained at home for a few days and then she was taken to hospital. When she was taken to hospital she was treated for lung infection and finally died of lung infection but in the meantime it appears that some police investigation is started and according to the material on record, a statement of Dharani Rani Chakma was allegedly recorded on 23rd August 2010.

4. In the statement which I have perused it is clearly stated that she was raped by Birendra Sarkar the present petitioner. Whether the statement recorded under Section 161 Cr.P.C is correct or not is not for this Court to decide at the stage of framing of charge. When charge has to be framed, all the documents are to be accepted as the gospel truth. The deceased before dying had allegedly made a statement that she had been raped by the

petitioner. In these circumstances, I find no merit whatsoever in the petition and the same is dismissed.

5. The petitioner has managed to delay these proceedings by almost 5 years. The case is transferred from the file of the Assistant Sessions Judge to the file of the Sessions Judge, Dharmanagar since now Assistant Sessions Judges do not have the power to decide matters under Section 376 I.P.C. The petitioner is directed to appear before the Sessions Judge, Dharmanagar on **6th August, 2015**. In case the petitioner does not appear before the Sessions Judge, Dharmanagar on 6th August, 2015, his bail shall be cancelled and non-bailable warrant shall be issued to secure his presence. Thereafter, if the petitioner wants a bail, he shall have to approach this Court and the Sessions Judge will not grant bail to him. The trial shall be conducted on day to day basis and shall be completed latest by 30th November, 2015.

6. It is made clear that this Court has not expressed any opinion on the merits of the case. This Court has only held that there is enough material to frame a charge and it is not a case of discharge. Whether the petitioner is guilty or not guilty will have to be proved in accordance with law.

Send down the LCRs forthwith.

CHIEF JUSTICE

Sukhendu