

05.10.2020

Sl. No. 09

Srimanta/Mithun

**IA No.CRAN/1/2020 (Old No.: CRAN/4493/2020),
CRAN/2/2020 (Old No.: CRAN/4495/2020),
in
CRR /1133/2020**

(Via Video Conference)

In Re: An application under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 in connection with an order dated 24.06.2019 passed by the learned Additional Sessions Judge, Fast Track, 1st Court at Barrackpore in connection with Sessions Case No.169 of 2018 which arose out of Belghoria P.S. Case No.482/2013 dated 08.10.2013 under Sections 306 of the Indian Penal Code, thereby rejecting the prayer of the petitioner under Section 321 of the Code of Criminal Procedure.

And

**In the matter of : The State of West Bengal, Public
Prosecutor (In-Charge), Mr.Saibal Bapuli, High Court,
Calcutta.**

... Petitioner

Mr. Rana Mukherjee,Ld. A.P.P.
Mr. Santanu Chatterjee, Adv.

... for the State

An application filed on behalf of the Prosecution, State of West Bengal under Section 321 of the Code of Criminal Procedure was rejected by the learned Additional Sessions Judge, Fast Track, First Court at Barrackpore by an order dated 24th June, 2019 in Sessions Case No.169 of 2018.

The opposite party is the de facto complainant of Belghoria police station Case No.428 of 2013 dated 8th October, 2013 under Section 306 of the Indian Penal Code. On completion of investigation, police submitted charge sheet against one Juhi Mazumdar (Dey) and Smt. Dalia Dey, mother of Juhi Mazumdar under Section 306 of the Indian Penal Code. Out of the said case, above-numbered Sessions Case was originated and it was at the stage of trial. At that stage, the prosecution filed an application praying for withdrawal from prosecution under Section 321 of the Code of Criminal Procedure.

It is submitted by Mr. Rana Mukherjee, Ld. A.P.P.-in-Charge, on behalf of the petitioner that marriage of Juhi was solemnized with the victim of this case. After marriage they were leading happy conjugal life. But subsequently one Srimoy came to the life of the wife of the victim. They had allegedly illicit relation. As a result of such relation, there was family discord between the victim and his wife, Juhi. Victim then committed suicide leaving a suicidal note stating, inter alia that for illicit relationship between his wife and the said Srimoy, his family life was shattered and he brought his life to an end. It is also frankly submitted by Mr. Mukherjee that the said suicidal note was compared with the admitted hand writing of the victim and it was matched. However, the investigation does not reveal any offence under Section 306 of the Indian Penal Code.

The learned Trial Judge failed to appreciate under what facts and circumstances the prosecution filed the application under Section 321 of the Criminal Procedure Code.

I have perused the impugned order dated 24th June, 2019. The reasons cited by the learned Trial Judge is as follows:-

“So, when the alleged offence having prima facie materials is the crime against the State, the prayer of the prosecution to allow withdrawal at this stage appears to me against the policy of natural justice.”

“Therefore, the prayer for withdrawal from prosecution and discharge of the accused persons as prayed for under Section 321 of the Criminal Procedure Code are rejected.”

Through the opposite party has not appeared even after service of notice upon her, this Court is of the view that the provision of Section 321 of the Code of Criminal Procedure cannot be adjudicated upon on the principle of violation of natural justice.

Withdrawal from prosecution if permitted when there is absolutely no material against the accused and continuation of trial would be abused of the process of the Court. This question can only be determined on the basis of the materials collected by the Investigating Officer during investigation, or, in other

words, from the documents under Section 173 of the Code of Criminal Procedure.

The learned Trial Judge failed to adjudicate the application under Section 321 of the Code of Criminal Procedure on the perspective as stated above.

For the reasons the impugned order dated 24th June, 2019 is set aside. The instant Criminal Revision is allowed.

The learned Trial Judge is directed to dispose of the application under Section 321 of the Code of Criminal Procedure filed by the prosecution in accordance with law afresh taking into consideration all the documents available in the Case Diary within three months from the date of communication of the order.

The learned Additional Public Prosecutor-in-Charge is requested to send a server copy of this order to the learned Trial Judge within a fortnight.

(Bibek Chaudhuri, J.)