

23.12.2020
SL No.13
pk

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

C.R.R. 1858 of 2020

(Through Video Conference)

Somnath Paral and Others

Versus

State of West Bengal

For the petitioner : Mr. Tanmay Chowdhury
..... Advocate

Heard on : 23.12.2020

Judgment on : 23.12.2020

Jay Sengupta, J.:

This is an application for quashing of a proceeding in which a charge-sheet was submitted against the accused under Sections 323, 341 and 509 of the Indian Penal Code, Section 75 of the

Juvenile Justice (Care and Protection of Children) Act, 2015 and added Section 12 of the POCSO Act, 2012.

Learned counsel appearing on behalf of the petitioners submits as follows. The petitioners are the tenants of the grandmother of the minor victim boy. The main allegations are against the two other relatives of the child. Initially the petitioners were not arraigned as accused in the First Information Report. However, after recording of the statement of the 12 years old victim boy, they were made accused in this case although the only charge levelled against the present petitioners was under Section 12 of the POCSO Act. As would be evident from a plain reading of the statement of the victim boy recorded under Section 164 of the Code, no prima facie case is made out against the petitioners. The case is a fallout of a dispute between the family members and the present petitioners have been unnecessarily dragged into it.

I have heard the submissions of the learned counsel appearing on behalf of the petitioners and have perused the revision petition including a copy of the statement of the 12 years old boy recorded under Section 164 of the Code.

From the statement of the victim boy recorded under Section 164 of the Code, it appears that all the accused had been repeatedly contacting him, accosting him on the road, threatening

him and even asking him to indulge in bestiality. It is implicit that the last allegation clearly had a sexual overtone.

As per the explanation to Section 11 of the POCSO Act, any question which involves “sexual intent” shall be a question of fact.

In my view, among other things, the allegations prima facie make out offences mentioned in Section 11 sub-sections (i) and (iv) of the POCSO Act, which are punishable under Section 12 of the said Act.

The alleged abominable acts of the petitioners may also make out other offences. It will be for the Learned Trial Court to delve into it.

Besides, whether the petitioners had actually committed such offence or not is purely a disputed question of fact and cannot be gone into in an application for quashing of proceeding.

In view of the above, I do not find any merit in this application.

Accordingly, the revisional application is dismissed.

However, there shall be no order as to costs.

Urgent photostat certified copies of this order may be delivered to the learned Counsel for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)

