

17.06.2021

Sl. No. 29

Srimanta

Ct. No. – 42

D/L

CRR/300/2018

(Via Video Conference)

In Re : An application under Section 482 read with Section 401 of the Code of Criminal Procedure Code, 1973.

In the matter of : Basanti Mondal

... petitioner.

Mr. Debashis Banerjee, Adv.

...for the petitioner.

Mr. Rana Mukherjee, Adv.,

Ms. Debjani Sahoo, Adv.

...for the State.

Affidavit-of-service filed in Court today be kept with the record.

The learned Advocates for the petitioner and the State are present.

The instant application is filed challenging an order dated 5th January, 2018 passed by the Learned Chief Judicial Magistrate, Murshidabad in G. R. Case No. 4836 of 2017 arising out of Jalangi Police Station Case No. 983 of 2017 under Sections 363/365/366/34 of the Indian Penal Code.

It is pertinent to mention that the victim girl was missing and a complaint was lodged by the de facto complainant, being the mother of the victim girl. Subsequently, the victim girl was recovered and produced before the Learned Chief Judicial Magistrate, Murshidabad. She was released on her personal bond. The de facto complainant filed an application praying for custody of the said victim girl on the ground that she was minor on the date of commission of offence. However, the Learned Magistrate rejected the contention of the de facto complainant and released the victim girl.

It is submitted by the learned Advocate for the petitioner that the Learned Magistrate failed to consider the documentary evidence with regard to the date of birth of the victim girl and refused to hand over her to the de facto complainant. It is also submitted by him that no enquiry was made prior to rejection of the application filed by the petitioner under the rules framed under Juvenile Justice (Care and Protection of Children) Act, 2015.

Mr. Rana Mukherjee, Learned Public Prosecutor-in-Charge rightly submits that this Court cannot enquire into the question of date of birth of a victim girl on appreciation of evidence.

I concur with the view made by Mr. Mukherjee. The instant revision is disposed of directing the Learned Chief Judicial Magistrate to make an enquiry as to the date of birth of the victim girl as per the provision made in the rules of Juvenile Justice (Care and Protection of Children) Act, 2015 and the documents filed by the de facto complainant.

In view of the above order, the impugned order dated 5th June 2018 is set aside. The revisional application is, thus, allowed on contest, however, without cost.

The Learned Chief Judicial Magistrate, Murshidabad is directed to act as per the direction made hereinabove within one month from the date of communication of this order.

Parties are at liberty to act upon the server copy of this order.

(Bibek Chaudhuri, J.)