

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

CRR 458 of 2018

Nilima Begum @ Nilima Begam Purkait
Vs.
The State of West Bengal & Ors.

For the Petitioner : Mr. Dipanjan Chatterjee
Mr. Asit Nayek

For the O.P. No. 2 : Ms. Sayanti Santra
K. Bera

For the O.P. No. 3 : Ms. B. Khatun

For the State : Mr. Imran Ali
Mr. M.F.A. Begg

Heard on: : 5th October, 2021

Judgment on : : 5th October, 2021

The Court:

This is an application challenging the order dated 18.12.2017 passed by the learned Chief Judicial Magistrate, Howrah (Sadar) in connection with G.R. No. 4740 of 2016 arising out of Sankrail Police

Station Case No. 620 of 2016 dated 23.07.2016 under Sections 302 and 34 of the Indian Penal Code.

The opposite party nos. 2 and 3 who are the accused in this case are represented. However, the other accused / opposite parties are not represented. Although most of them were served with notice, intimation could not be served on a co-accused who had allegedly absconded.

Mr. Chatterjee, learned counsel appearing on behalf of the petitioner submits as follows. The petitioner is the de facto complainant in this case. She is the wife of the victim deceased. She lodged an F.I.R. alleging that the accused had called her husband over telephone pursuant to which he went there. After sometime his dead body was found at a place. The petitioner learnt that the accused had assaulted her husband causing serious injuries including on head which led to his death. Although, none of the accused were exonerated while submitting charge sheet and the charge was also not scaled down, the petitioner is aggrieved with the manner of investigation conducted by the agency. First, no statement of the petitioner had been recorded under Section 164 of the Code. Secondly, the mobile phone of the petitioner's husband was not seized by the Investigating Officer. The phone would have clearly evinced what call was made by

whom to the deceased. However, it is not the case of the petitioner that the phone contained any call record. The petitioner also does not press ground agitated before the learned Court that on her prayer, a statement of the accused has to be recorded under Section 164 of the Code.

Mr. Ali, learned counsel appearing on behalf of the State, relies on the case diary and submits as follows. Investigation was done properly in this case. Although six accused were named F.I.R., after investigation another accused was arraigned in this case. The statement was also recorded on 19.9.2016 of the de facto complainant / petitioner under Section 164 of the Code. So far as the issue of non-seizure of mobile phone of the petitioner's husband is concerned there was no need for the same. Because, as recorded in the case diary, a C.D.R. was obtained which would show the phone call records of the deceased in respect of such phone. In any event, if the phone is required to be produced during trial the petitioner, as a witness, can always do the same.

Ms. Santra, learned counsel appearing on behalf of the opposite party no. 2, and Ms. Khatun, learned counsel appearing on behalf of the opposite party no. 3, submit that their clients as alleged accused duly co-operated with the investigation.

I have heard the submissions of the learned advocates for the parties and have perused the revisional application and the case diary.

First, not only the accused named by the de facto complainant / petitioner were implicated in this case, another accused was also arraigned.

It appears from page 67 of the case diary that on 19.09.2016 a statement of the de facto complainant / petitioner was recorded under Section 164 of the Code.

Since the C.D.R. in respect of the mobile phone of the victim deceased has purportedly been collected by the Investigating Officer, as submitted on behalf of the State, the non-seizure of the telephone would not be fatal to the prosecution case. In any event, the same can be produced by the petitioner as an witness during trial if required. After all, this is not a case where the petitioner claims that the mobile phone contained any call recording.

On perusal of the case diary it does not appear that there was any flaw in the investigation conducted by the officer concerned.

In view of the above, I do not find any merit in this application and the same is dismissed, although without any order as to costs.

It appears that already there is some delay in the proceeding before the learned Trial Court.

The learned Trial Court is requested to conclude the proceeding as expeditiously as possible.

Urgent certified copy of this order, if applied for, be supplied to the parties upon completion of usual formalities.

(Jay Sengupta,J.)

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