

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction

Before:
The Hon'ble Mr. Justice Jay Sengupta

C.R.R. 540 of 2021

Ashok Das
Vs.
The State of West Bengal & Anr.

For the Petitioner : Ms. Minoti Gomes,
Ms. Manika Sarkar.

Heard on : 05.03.2021

Judgement on : 05.03.2021

Jay Sengupta, J. :

This is an application seeking quashing of a proceeding under Sections 376 and 448 of the Penal Code.

Learned Counsel appearing on behalf of the petitioner submits as follows. The petitioner is the tenant in the premises in question. The property was subsequently purchased by the victim's husband. Some disputes cropped up in the meantime. The petitioner and his mother started a few proceedings including under Section 144 of the Code against the husband of the victim. After sometime, the husband of the de facto complainant approached the petitioner for a loan. The said loan was granted, but the cheque meant for repayment was dishonoured. As a counterblast meant to pressurize the petitioner, the de facto complainant/victim

lodged the present First Information Report alleging that the petitioner came to her house when her husband and son were out and taking advantage of the situation, ravished her. There is a delay of about 28 days in lodging the First Information Report. There is also a discrepancy in the version given by the victim in her statement recorded under Section 164 of the Code.

I have heard the submissions of the learned Counsel appearing on behalf of the petitioner and have perused the revision petition.

From the First Information Report lodged by the de facto complainant/victim, it appears that she clearly stated about the loan taken by her husband. In fact, she alleged that on a particular day the accused/petitioner entered into her house forcibly in the garb of taking back the amount of loan given to the husband and taking advantage of the absence of the victim's husband and son, committed the offences on her against her will. When she shouted, her daughter and the neighbours came running and the petitioner left. She explained that she became afraid after the incident.

The victim clearly stated that she became afraid after the incident. In any event, the question of delay in lodging complaints for offences of sexual assault is dealt with rather liberally by our Courts.

In the statement recorded under Section 164 of the Code, she mentioned about her sexual assault on her in the same context as mentioned by her in the First Information Report. In view of the changes in the definition of sexual assault brought in by the recent amendments, I think it will be a question of trial whether the version given in the First Information Report is contradictory to the version given in the statement recorded under Section 164 of the Code.

It is quite evident that the petitioner, although a tenant in the said premises, was nevertheless quite resourceful inasmuch as he could give a loan of Rupees Seven Lakhs to the purchaser of the property.

The question of mala fide coming out of the prior proceeding initiated on behalf of the petitioner appear to be essentially a disputed question of fact that can only be decided during trial.

In view of the above, I do not find any merit in this application for quashing of the proceeding. Accordingly, the same is dismissed.

However, the petitioner shall be at liberty to take up all the points raised in this application before the learned Trial Court at the stage of framing of charge.

With these observations, the revisional application is disposed of.

Urgent photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

(Jay Sengupta, J.)