

26.11.2021.
Court No.13
Item No. 17
pk

**W.P.A. No. 13990 of 2021
(Through Video Conference)**

**Priti Kar nee Chakraborty
Versus
The State of West Bengal & Ors.**

Mr. Sourav Chatterjee,
Mr. Aniruddha Bhattacharya,
Mr. Koustav Bagchi,
Mr. Anup Sarkar,
Mr. Sourav Mukherjee,
Mr. Debayan Ghosh.

...For the petitioner.

Mr. Subhabrata Datta,
Mr. Debashis Sarkar.

...For the State.

Mr. Sukant Chakraborty,
Mr. Anindya Halder,
Mr. Zuber Ahmed.

..For the respondent nos. 7 to 10.

Counsel for the State, Mr. Dutta, in his usual fairness, has submitted that although the charge sheet has been filed in the matter, prosecution is willing to record the statement under Section 164 of the Cr. P. C. at the instance of this Court.

Counsel for the private respondents/accused opposes the leave sought by the State. It is submitted that once a charge sheet is filed, any further scope of reopening the case or any other remedy against it, can only be sought under Section 173 of the Cr. P. C.

This Court is of the view that the power of the High Court under Article 226 is not extinguished by reason of the provisions of the Cr. P. C.

The next argument of the learned counsel for the prosecution is based on a decision of the Supreme Court in the case of **Jogendra Nahak and others Versus State of Orissa and others** reported in **(2001) 1 SCC 272**. Counsel relies upon the judgement and submits that the police in course of investigation is not bound by the request of any person to have his statement recorded under Section 164 of the Cr. P. C. in course of investigation. In the said case a 3rd party, wholly unconnected with the investigation was desirous of giving a statement to the prosecution.

In the instant case, the statement under Section 164 Cr. P. C. by the victim herself is indeed vital for prosecution case. The said judgement, therefore, has no manner of application in the instant case.

In that view of the matter, this Court permits the prosecution to record the statement of the victim under Section 164 Cr. P. C. Investigation may, thereafter, be completed with a supplementary charge sheet if the prosecution so deems necessary.

With the aforesaid observations, the writ petition is disposed of.

There will be no order as to costs.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)