

19.07.2021
Item no.9
Ct. No.34
CHC

C.R.R. No.2781 of 2019

(Via Video Conference)

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

AND

In the matter of:-

Anil Poddar

... petitioner

Mr. Mrityunjoy Chatterjee,
Mr. Susnigdho Bhattacharyya

...for the petitioner

Mr. Saswata Gopal Mukherji, Ld. P.P.
Mr. Arijit Ganguly,
Mr. Sanjib Kr. Dan

...for the State

Supplementary affidavit filed by the learned advocate for the petitioner be kept with the record.

Learned advocate relying upon the judgement of the Hon'ble Supreme Court which was delivered in ***Dr. Dhruvaram Murlidhar Sonar vs. The State of Maharashtra & ors.*** passed in **[S.L.P. (Criminal) No.6532 of 2018]** tries to impress upon the Court that it was very well known to the parties, that there were impediments for marriage, still both of them consented to the act of sexual relationship.

Mr. Arijit Ganguly, learned advocate appearing for the State opposes such contention and submits that the materials collected during the stage of investigation which incorporated not only the complaint but also the statement of victim recorded under Section 164 Cr.P.C. which do not substantiate such stand of the petitioner.

I have perused the allegations alongwith the materials collected by the investigating agency in course of investigation and after having assessed the same is of the considered view that the appreciation of Section 90 of the Indian Penal Code varies from one case to another. As such, at this stage without a scrutiny being done by the trial court, I am of the view that it would not be fit and proper for interference at this stage of this case.

However, petitioner will be at liberty to take out an application under Section 227 of the Code of Criminal Procedure, if so advised and agitate the points canvassed in this revisional application at the time of consideration of the charge.

Needless to state that the observation made hereinabove is restricted for the disposal of the present revisional application and the learned court while deciding the application under Section 227 of the Code of Criminal Procedure would independently consider the factual matrix of the case and arrive at it own finding.

With the aforesaid observations, C.R.R.2781 of 2019 is disposed of.

Pending application, if any, is consequently disposed of.

Interim order, if any, is hereby vacated.

All parties shall act in terms of copy of this order downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)