

D/L21.
August 4,
2021
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C.R.R. No.3319 of 2018
(Via Video Conference)

Ritesh Panda
Versus
The State of West Bengal and Another

Mr. Rajiv Lochan Chakraborty,
Mr. Debapratim Guha,
Ms. Vashati Chakraborty.
...for the petitioner.

Ms. Reshmi Roy,
Mr. Nilanjan Adhikari.
...for the opposite party no.2.

Mr. Saswata Gopal Mukherjee,
Mr. Imran Ali,
Ms. Debjani Sahu.
...for the State.

The present revisional application has been preferred by the petitioner challenging the proceedings being G.R. Case No.2948 of 2017 arising out of Basirhat Police Station Case No.681 of 2017 under Sections 363/511 of the Indian Penal Code.

It has been apprised to this Court that charge-sheet has already been submitted in connection with the instant case and date has been fixed for consideration of charges.

Mr. Debapratim Guha, learned advocate appearing for the petitioner submits that the present accused is the father of the minor and he being a natural guardian cannot be implicated in this case under Sections 363/511 of the Indian Penal Code and the same was initiated mala fide at the instance of the maternal-grand-father of the child who was vindictive of the accused, because of the other case which is pending relating to offences under

Sections 498A/306 of the Indian Penal Code. The learned advocate for the petitioner relies upon judgments of Karnataka High Court, Madras High Court and Punjab-Haryana High Court in order to substantiate his contention regarding the issue that the natural guardian cannot be made accused of offences under Section 363 of the Indian Penal Code.

Mr. Saswata Gopal Mukherjee, learned Public Prosecutor appearing for the State draws the attention of this Court to the order dated 22nd February, 2017 which reflects that the minor was released on bond by the jurisdictional Magistrate in favour of the defacto complainant/maternal-grand-father, who was having the custody of the minor.

In fact, the civil court's order is also not in favour of the present petitioner, who happens to be the father of the minor. The maternal-grand-father was having custody pursuant to the order of a court of law. Whether under those circumstances the provisions of Section 363 of the Indian Penal Code would be attracted regarding the allegations made are not only questions of law but are intricately associated with the facts of the case which may differ from one case to another.

Ms. Reshmi Roy, learned advocate, appears for the opposite party no.2 and draws the attention of this court to the different orders of the learned Magistrate as well as the learned civil court.

I have heard the contentions advanced by the respective parties.

Having regard to the stage, that the next date is fixed for consideration of charge before the learned trial court, the petitioner would be at liberty to prefer an application under Section 227 of the Code of Criminal Procedure after serving an advanced copy to the learned Public Prosecutor appearing on behalf of the State. The learned trial court would consider the points so canvassed in the application under Section 227 of the Code of Criminal Procedure along with the judgments relied upon by the learned advocate for the petitioner in the instant case. The learned trial court will thereafter come to a finding that whether the facts and circumstances of the case prima facie make out offences as alleged under Sections 363/511 of the Indian Penal Code, thereby asking the petitioner to face trial in a court of law.

With the aforesaid observations, CRR 3319 of 2018 is disposed of.

Pending application, if any, is consequently disposed of.

Case diary be returned to the learned advocate appearing for the State.

Interim order, if any, is hereby vacated.

The learned trial court is directed to overcome the stage of consideration of charges and proceed with the case.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)

