

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side

Present:
The Hon'ble Justice Jay Sengupta

CRR 1723 of 2020

AHID MANDAL
Vs.
STATE OF WEST BENGAL & ANR.

For the Petitioner : Mr. Kaushik Gupta
Mr. Arnab Nandi

For the State : Mr. Swapan Banerjee
Ms. Purnima Ghosh

Heard on: : 24th February 2021

Judgment on : : 24th February 2021

The Court:

This is an application challenging an order dated 16.01.2020 passed by the learned Additional Chief Judicial Magistrate, Basirhat, North 24 Parganas in G.R. –1235 of 2016 under Sections 363, 366 of the Indian Penal Code, thereby rejecting a prayer or further investigation.

The private opposite party is the accused in this case. It appears that he could not be arrested. As would be evident from an earlier affidavit of service, his address could not be located.

No one appears on behalf of the private opposite party.

Learned counsel appearing on behalf of the petitioner submits as follows. The petitioner is the de facto complainant and the father of the minor victim girl. During investigation the 15 years old victim girl gave an exonerative statement, under duress, before the learned Magistrate. She resiled from the statement soon thereafter and on 16.01.2020 made a prayer to have her statement recorded under Section 164 of the Code. The protest petition filed before the learned trial court was erroneously rejected and the prayer for further investigation was turned down. Furthermore, the investigation in this case was not done as per the guidelines as laid down by a Division Bench of this Court on 05.07.2018 in CRM 3697 of 2018. A Sub-Inspector of Police of the local Police Station investigated the present case while as per the guidelines, specially trained police personnel of the Anti Human Trafficking Unit ought to investigate the case. The Investigating Officer shall not be below the rank of an Inspector and shall preferably be a female personnel. Besides, no inter-state or inter-country investigation was done in this case although the alleged offences apparently took place in different countries. Although the victim was shown to have been recovered from Basirhat, she had actually been taken to Bangladesh for commercial sexual exploitation. Moreover, no charge was added under the POCSO Act, although this is a case where a child was trafficked for commercial sexual exploitation. No charge under the Immoral Traffic Prevention Act or the POCSO Act had been added or, for that matter, under Section 376 of the Penal Code or other grievous sections of the Penal Code.

Learned counsel appearing on behalf of the State relies on the case diary and submits as follows. The investigation of the case has been properly done. The victim girl was examined under Section 164 of the Code. In the event further charges are made out, the same can be added at a subsequent stage by the learned trial Court.

I have heard the submissions of the learned counsels appearing of the parties and have perused the petition and the case diary.

A Division Bench of this Court had laid down certain guidelines on 05.07.2018 in CRM 3697 of 2018, inter alia, directing that the investigation into offences involving commercial sexual exploitation of women and children be carried out by a specialized agency by an Anti-Human Trafficking Unit.

The relevant directions are quoted as under :-

“(a) any First Information Report (for short F.I.R.) registered under the I.T.(P) Act or under sections 370/372/373 of I.P.C. or under the provisions of the POCSO Act involving commercial sexual exploitation of women or children should be investigated by a specialised agency like Anti-Human Trafficking Unit;

(b) Such F.I.R.s registered with the local police station must, within 24 hours thereof, be transferred to the specialised agencies for further investigation;

(c) In order to facilitate the investigation in these cases, State Government is directed to set up Anti-Human

Trafficking Units in every district which shall be manned by specially trained police personnel not below the rank of Inspector who would be preferably women. These officers shall be notified as special police officers under section 13 of the I.T.(P) Act.”

A serious allegation has been levelled by the de facto complainant that the victim girl was compelled to give an exonerative statement under section 164 of the Code. However, she resiled from such statement and wanted to have another statement recorded before a Learned Magistrate.

It is germane to mention here that although the present case was initially registered for the commission of offences under sections 363 and 366 of the Penal Code, it purportedly involved commercial sexual exploitation of a minor girl. Therefore, it was required to be looked into whether necessary charges under the POCSO Act and the Immoral Traffic Act and additional charges under the Penal Code including under section 376 of the Code ought to have been added. The alleged offences should have been properly investigated.

In view of these, the guidelines passed by this Court as referred to above would also apply in the present case.

It appears that in the present case the investigation was conducted by a Sub-Inspector of Police, who was not a part of any Anti-Human Trafficking Unit. But, the guidelines laid down by this Court require that a specially trained officer, preferably a woman officer, of the Anti-Human Trafficking Unit should be investigating such offences.

In view of the above, I do not think that the investigation of the case was done properly by the investigating agency.

The Learned Magistrate erred in not properly appreciating the grievances of the de facto complainant.

Accordingly, the impugned order and the final report submitted by the Investigating Agency are set aside.

It is directed that the further investigation of the case shall be handed over to the Anti Human Trafficking Unit of the concerned district and the investigation be done as per the guidelines as laid down by a Division Bench of this Court on 05.07.2018 in CRM 3697 of 2018.

With these observations, the revisional application is disposed of.

Urgent photostat certified copy of this order, if applied for, is to be given to the parties upon usual undertakings.

(Jay Sengupta,J.)

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