

25.01.2021
s.das
Ct. No. 42
43

CRR 1799 of 2020

In the matter of : An application under Section 482 of the Code of Criminal Procedure.

And

In the matter of : Tapas Das Adhikary petitioner

Mr. Raghunath Das
..... for the petitioner

Mr. S. G. Mukherjee, learned P.P.
Mr. Arijit Ganguly
..... for the State

This is an application for quashing of a case registered under Sections 363/366 of the Indian Penal Code, which ultimately ended in charge-sheet, now pending before the learned Additional District and Sessions Judge, 2nd Court, Contai, Purba Medinipur, after the case was committed to it.

Learned Counsel, representing the petitioner, proposing quashment, submits that victim voluntarily left her home in consequence of a friendly relationship with the petitioner, who was then pursuing study in same class with victim of a school, and upon consideration of the age of the petitioner, a student of Class XI, being a boy of 20 years old, further continuance of instant prosecution will be an abuse of the process of Court, particularly when there is no ingredients supportive of the instant prosecution. It is further contended that the victim was about to reach her age of discretion, thus, falling short of few months to reach her majority at the time of offence, and, in consequence of an

intimate friendly relationship of victim with the petitioner, the victim went to her matrimonial home, without the knowledge of her parents, which can hardly be regarded as a true case of elopement from the lawful custody of the parents of victim. It is also contended that the pendency of this case is going to disturb the mind-set of the petitioner, and largely interfering with ongoing study of the petitioner.

Adverting to the statement of the victim recorded u/s.164 of the Cr.P.C., learned Counsel appearing for the petitioner has attempted to establish that it is not a case under Sections 363/366 of the Indian Penal Code for want of prima facie materials.

Mr. Ganguly, learned Counsel, representing the State, submits that at the time of occurrence, victim has never reached her age of discretion and, more so, mutual relationship of the victim with the petitioner was not recognised by the parents of the victim. It is further submitted that when investigation has already ended in charge-sheet collecting sufficient materials to reveal the prima facie case, made out against the petitioner, it would be improper to accept proposed quashment.

It appears from the submissions advanced by both the parties that there was a relationship between the victim and the petitioner for some considerable period of time without the knowledge of the parents of the victim, and since it was not accepted by the parents of the victim, the victim fled away to her matrimonial home. The victim fell short of few months to reach her age of discretion at the time of alleged offence.

Upon perusing of the xerox copy of the order of the lower court record, it appears that no date has yet been fixed for consideration of the charge. When no date has been fixed by the learned court below for consideration of the charge, the court is of the view that petitioner has enough scope left open to agitate the points, now raises, at the time of consideration of the charge. The instant revisional application, thus, may be disposed of directing the learned court below to fix a suitable date for consideration of the charge, and if the point is raised by the petitioner, the same shall be disposed of in accordance with the provisions of the law providing sufficient opportunity of hearing to either of the parties to this case. Petitioner is further granted liberty to agitate this issue before the learned trial court on the date to be fixed by the learned court below upon making capitalisation of the order passed in this case. The case is, thus, disposed of without touching upon the merits of the case and also without prejudice to the right of petitioner.

Accordingly, this revisional application is disposed of with the above observations and directions.

Urgent photostat certified copy of this order, if applied for, be given to the parties on completion of usual formalities.

(Subhasis Dasgupta, J.)