

15.03.2021
Item no.17
Ct. No.2
CHC

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE JURISDICTION
(Physical Hearing)**

C.R.R. No.33 of 2020

In Re:- An application under Sections 397/401 read with
Section 482 of the Code of Criminal Procedure, 1973.

In the matter of:-

Samim Sarkar @ Tuntty
.....petitioner

Mr. Subhasish Misra
.....for the petitioner

Mr. A. S. Chakraborty, Ld. A.P.P.
Mr. Nilay Chakraborty
.....for the State

This is for quashing of proceeding in connection with Sessions
Case No.80(12) of 2018 under Sections 448/376/323/506 of the
Indian Penal Code.

Learned advocate Mr. Subhasish Misra, representing the
petitioner submits that the medical evidence has already ruled out
the possibility of having subjected the petitioner/victim to sexual
assault. Upon taking such point, the learned advocate for the
petitioner proposes that the allegation raised against the
petitioner is without any basis, and there is no justification to
continue with the proceeding any more, and if such proceeding is

allowed to be continued, there will be an abuse of the process of the court.

Mr. Nilay Chakraborty, learned advocate representing the State submits that when chargesheet has already been submitted citing as many as 17 witnesses and thereupon court has already fixed date for consideration of the charge, the prayer for quashing should not be allowed at this stage.

The point so raised, may be raised at the time of making consideration of the charge before the learned court below, and if any such point is raised, the same shall be duly addressed to by the learned court below, and learned court below shall be free to decide the issue in accordance with the provisions of the law, providing sufficient opportunity of hearing to either of the parties to this case.

Since the court has already fixed date on 29th April, 2021, let there be direction directing the learned court below to make effective utilization of the date so far fixed for making consideration of charge, and if for any reasons whatsoever, the same could not be utilized, a date for making consideration of the charge may be fixed three weeks thereafter peremptorily.

It is clarified that this case is disposed of without touching upon the merits of the case and without prejudice to the rights and contentions of petitioner in the matter.

With this direction/observation, the instant revisional application stands disposed of.

Urgent Xerox certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(Subhasis Dasgupta, J.)