

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side

Present:
The Hon'ble Justice Jay Sengupta

CRR 450 of 2022

Kuddus Mondal
Vs.
The State of West Bengal

For the Petitioners : Mr. Arnab Mukherjee

For the State : Mr. Imran Ali
Mr. Saryati Dutta

Heard on : 04.03.2022

Judgment on : 04.03.2022

Jay Sengupta, J.:

This is an application challenging an Order No. 76 dated 28.01.2022 passed by the learned Additional Session Judge, 7th Court, Barasat, North 24 Parganas in S.C. Case No. 40 of 2017,

thereby allowing an application under Section 311 of the Code filed by the prosecution.

A further report filed on behalf of the State is taken on record.

It appears that the defacto-complainant was served with a notice of hearing. Yet, no one represents her.

Learned counsel appearing on behalf of the accused petitioner submits as follows. The petitioner is an accused in a case under Section 376 (2) (1) of the Penal Code. The witness action was completed on 11.03.2020. 02.04.2020 was fixed for arguments. At such belated stage, an application was filed on behalf of the prosecution under Section 311 of the Code to examine the learned Judicial Magistrate who had recorded a statement of the victim girl under Section 164 of the Code. This cannot be sustained in the eye of law. This also amounts to filling up of lacuna in the prosecution case. Accordingly, the impugned order should be set aside.

Learned counsel appearing on behalf of the State submits as follows. The witness who is sought to be examined is only a formal witness who had recorded the statement of the victim girl under Section 164 of the Code. The statement recorded under Section 164 of the Code forms a part of the record and there is a clear mention of the learned Judicial Magistrate who had recorded the statements.

Therefore, there is no question of filling of any lacuna. In the interest of justice, a prayer can be made under Section 311 of the Code any time before passing of the judgment. Therefore, there is no merit in this application. The State prays for an expeditious disposal of the proceeding.

I have heard the submissions of the learned counsels appearing on behalf of the petitioner and the State and have perused the revision petition.

It appears that at the stage of arguments, a prayer was made by the prosecution to examine the learned Magistrate who had recorded the statement of the victim girl under Section 164 of the Code. This is not a new fact and the statement under Section 164 of the victim girl is already on record. Therefore, there is no question of filling of lacuna by the prosecution by examining this witness.

Moreover, in the interest of justice such prayer in terms of Section 311 of the Code can be made at any stage.

Therefore, I do not find any illegality in the impugned order.

Accordingly, the revisional application is dismissed.

However, there shall be no order as to costs.

The learned Trial Court shall conclude the proceeding as expeditiously as possible.

Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta,J.)

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