

20.07.2022

CRR 672 of 2021

Anshuman Sarkar
Vs.
State of West Bengal and Anr.

Mr. Milon Mukherjee, Ld. Sr. Adv.,
Mr. Pratim Priya Dasgupta, Adv.,
Mr. Amit Dey, Adv.

...for the petitioner

Ms. Zareen Khan, Adv.,
Ms. Sreeparna Das, Adv.

.....for the State

The petitioner has prayed for quashing of the proceeding in connection with GR Case No.726 of 2021 under Sections 363/365 of the Indian Penal Code arising out of Dum Dum P.S Case No.95 of 2021 dated 23rd January, 2021 presently pending before the learned Judicial Magistrate 3rd Court at Barrackpore.

The petitioner is the accused of the above mentioned case pending in the court of the learned Magistrate.

Dum Dum Police Station Case No.95 of 2021 was registered on the basis of a complaint filed by the defacto complainant/opposite party No.2 on 23rd January, 2021 alleging, inter alia, that the elder daughter of the defacto complainant had been leaving

home in the afternoon and returning home at late hours of night regularly after 9 pm for couple of weeks before lodging the FIR. The opposite party No.2 and other family members used to ask about her long absence regularly but the daughter of the defacto complainant evaded such questions and did not give reply to them. On 22nd January, 2021 the daughter of the opposite party No.2 returned home late. When he asked his daughter as to why she came back to her house at such late hours of night, she started to argue with her father. In course of such altercation, she left home and did not return. The opposite party No.2 lodged a missing diary with the jurisdictional P.S and thereafter submitted a written complaint on the basis of which a case under Section 363/365 of the Indian Penal Code was registered. In course of investigation the daughter of the opposite party No.2 was recovered from the house of the petitioner and the petitioner was arrested.

It is submitted by the petitioner that the petitioner is a good friend of the daughter of the opposite party No.2. On 22nd January, 2021 the daughter of the opposite party No.2 left her house following a hot altercation with her father and took shelter in the house of the petitioner. On 23rd January, 2021 she was recovered and the petitioner was arrested. It is

pertinent to mention here that on the date of the incident, the victim girl was aged about 17 years and the petitioner was of 36 years of age. This court fails to understand how friendship grew up between a man of 36 years and a teenaged girl.

Be that as it may, during investigation of the case statement of the victim girl was recorded under Section 161 of the Cr.P.C. Her statement was also recorded under Section 164 of the Cr.P.C by the Executive Magistrate. In both the statements, the victim girl stated that on 22nd January, 2021 she was abused by her grand-father and she was also assaulted as she was late in coming to her home. Out of retaliation, the petitioner on her own left her house and took shelter in the house of the accused/petitioner.

It is submitted by Mr. Milon Mukherjee, learned Senior Counsel on behalf of the petitioner that from the statement of the victim girl, it is ascertained that the victim girl voluntarily left her house and took shelter in the house of the petitioner after she was scolded and beaten by her grand-father because she came late to her home. In order to lodge a prosecution under Section 363 of the IPC, there must be the elements that the accused took or enticed away a minor out of the keeping and without the consent of the lawful guardian of such minor. In the instant case the prosecution

failed to collect any evidence against the petitioner that he took or enticed away the victim girl out of keeping and without the consent of the lawful guardian of such minor person. Therefore, there is no ingredient of offence under Section 363 of the IPC against the petitioner. There is also no ingredient of offence under Section 365 of the IPC as the petitioner did not commit any offence of kidnapping with intent to cause the victim girl to be secretly or wrongfully confined. The victim girl on her own came to his house and stayed in the night on 22nd January, 2021.

In have carefully perused the materials on record and as well as the case diary produced by the learned P.P-in-Charge. In addition to what has been submitted by the learned Advocate for the petitioner it is found from the case diary that both the petitioner and the victim girl were examined medically after the victim girl was recovered and the petitioner was arrested. There is no evidence whatsoever that the victim girl was subjected to sexual intercourse by the petitioner. Considering such aspect of the matter and on careful scrutiny of the case diary, this Court is of the view that in exercise of its inherent power, Court can quash the proceedings instituted against the petitioner to prevent abuse of the process of the Court. Where there is no role attributed to the petitioner in support of the charge

for which he is directed to face trial and continuation of the trial would be a mere formality because no fruitful result can be arrived at during trial, the proceeding against the petitioner amounts to “abuse of the process of the Court”.

For the reasons stated above further proceeding in connection with GR Case No. 726 of 2021 under Sections 363/365 of the Indian Penal Code arising out of Dumdum P.S Case No.95 of 2021 dated 23rd January, 2021 presently pending before the learned Judicial Magistrate, 3rd Court at Barrackpur be quashed.

The instant revision is accordingly disposed of on contest, however, without cost.

Case diary be returned.

(Bibek Chaudhuri, J.)