

08-04-2022
Subha
Item no.76
Ct no.34

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction

C.R.R 916 of 2019
with
IA No. CRAN 1 of 2019(Old No. CRAN 3951 of 2019)

In the matter of : **Biswanath Mondal & Anr.**petitioners.

In Re : An application under Section 401 read with Section 482 of
the Code of Criminal Procedure.

Mr. Tapas Kumar Ghosh
Mr. Tanmoy Chowdhury
.....for the petitioners.

Ms. Sreyashee Biswas
Ms. Puja Goswami
.....for the Private Opposite Party.

Ms. Anasuya Sinha
Mr. Pinak Mitra
.....for the State.

The subject matter of challenge in the present revisional application is the order dated March 1, 2019 passed by the learned Additional Sessions Judge, 1st Court, Asansol, Paschim Bardhaman in connection with Sessions Case No. 110 of 2016.

The genesis of the case relates to Asansol Women Police Station Case No. 57 of 2012 wherein the instant case was registered for investigation under Sections 376/417/120B of the Indian Penal Code. On completion of investigation, the Investigating Agency submitted chargesheet, which included amongst others the present petitioners being the parents of the principal accused namely one

Kajal Mondal. The case thereafter was committed to the court of sessions and at the time of consideration of charge, the present petitioners preferred an application for discharging them from the charges levelled by the Investigating Agency under Sections 417/120B of the Indian Penal Code.

The learned court after consideration of the materials available in the case diary refused to discharge the present petitioners, namely Biswasnath Mondal and Nomita Mondal.

Mr. Ghosh, learned advocate appearing on behalf of the petitioners submits that the petitioners have been unnecessarily implicated in the instant case and the learned trial court failed to appreciate that even if the facts which are narrated in the materials relied upon by the prosecution is accepted to be true, the same fails to make out any offence so far as the present petitioners are concerned.

Ms. Sinha, learned advocate appearing on behalf of the State produces the case diary and draws the attention of this court to the specific role of the present petitioners in the statement under Section 161 of the Code of Criminal Procedure and of all the witnesses including the statement under Section 164 of the Code of Criminal Procedure of the victim lady.

Ms. Biswas, learned advocate appearing on behalf of the private opposite party submits that the parents were the pivotal point for which the relationship could not materialise and it was the parents who were responsible for the act of the principle accused.

As the trial is yet to commence, I am not inclined to analyze

each and every statement which are available in the case diary, but for the limited purpose of assessing the complicity of the present petitioners, I would opine that at this stage the materials which are available, prima facie, reflects that the presence of the petitioners surfaced only when the principal accused, Kajal Mondal refused to marry on the pretext that it was because of the parents he is unable to marry the victim lady. The offence complained of is under Section 417 of the Indian Penal Code. If by impressing/representing the lady that the principal accused would marry the victim he had committed the offence, the same was not with the consent or connivance of the parents as is surfacing from the materials available in evidence. There was no concerted effort or the presence of the parents which surfaced in the materials available before this court on which the prosecution proposes to rely. The presence of the petitioners are only after the principal accused refused to marry. The same being the facts of this case as at present, I am of the opinion that further continuance of the present proceedings so far as the petitioners are concerned are unwarranted and the same if allowed to continue would result in abuse of the process of court.

However, if in course of trial, the witnesses do narrate the facts which are contrary or it reveals complicity of the present petitioners for the substantive offences, the learned trial court would be at liberty to invoke the provisions of Section 319 of the Code of Criminal Procedure.

For the present, as observed above, all further proceedings in respect of Biswanath Mondal and Nomita Mondal in respect of

Sessions Case No. 110 of 2016 (arising out of Asansol Women Police Station Case No. 57 of 2012) presently pending before the learned Additional Sessions Judge, 1st court, Asansol, Paschim Bardhaman be quashed.

Consequently, the present revisional application being CRR 916 of 2019 is allowed.

All pending applications, if any, in connection with the revisional application, are consequently disposed of.

Interim order, if any, is hereby made absolute.

The case was registered in the year 2012 and the Sessions Case was registered in the year 2016, almost 10 years have passed since the registration of the case, as such I direct the learned trial court to fix at least a schedule consisting of three dates on each and every month and take the trial to its logical conclusion within a reasonable period of time.

All concerned parties are to act in terms of a copy of this order duly downloaded from the official website of this court.

[Tirthankar Ghosh, J]

