

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

CRR 1428 of 2022

**Hiranmoy Mistri
-Vs.-
The State of West Bengal & anr.**

**For the petitioner: Mr. Kallol Kumar Basu
Md. Jannat ul Firdous**

Item No.10.

Heard & Judgment on: 22.06.2022

Bibek Chaudhuri, J.

The instant criminal revision is filed by the accused of S.C. 05 of 2020 arising out of Indpur Police Station Case No.108/2018 dated 20th December, 2018 under Sections 354B/376/417/506 of the Indian Penal Code.

After filing of the charge sheet and receipt of the relevant documents under Section 209 of the Code of Criminal Procedure, the accused/petitioner made an application under Section 227 of the Code of Criminal Procedure praying for discharging him from the charge under Section 376 of the Indian Penal Code. The learned trial Judge by passing the impugned order dated 5th April, 2022 rejected the said application filed by the petitioner and fixed a date for framing of charge.

In the instant revision aforesaid order dated 5th April, 2022 is under challenge. It is not in dispute that the petitioner is a professor of Ramkrishna Mahato Government Engineering College. The victim was a student of the said college. While pursuing her course both the victim and the accused came to contact with each other and developed intimacy which culminated a love relationship between the parties. It is alleged that on a day in the month of March, 2018 both of them met in an open field near Bheduasole within Police Station Onda and had oral sex. During commission of such act the accused inserted finger in the private part of the victim.

It is submitted by Mr. Basu, learned advocate for the petitioner that initially the case was registered under Section 354B of the Indian Penal Code. The victim refused to get herself medically examined. It is also the allegation of the victim that the accused took some

obscene pictures of the victim and threatened her to spread the said pictures in social media. However, the victim refused to hand over her mobile phone to the Investigating Officer but she submitted Whatsapp screen shot and the photocopies of the relevant documents from her mobile phone to the Investigating Officer. It is submitted by Mr. Basu that the Supreme Court in **Yogesh Alias Sachin Jagdish Joshi versus State of Maharashtra** reported in **(2008) 10 SCC 394** laid down the guideline as to how an application under Section 227 of the Code of Criminal Procedure is required to be dealt with. It is specifically observed by the Apex Court in the above mentioned report that if two views are equally possible and the Judge is satisfied that the evidence produced before him gives rise to suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused.

Paragraphs 15 and 16 of the aforesaid report in **Yogesh** (supra) are relevant and quoted below:-

"15. Chapter XVIII of the Code lays down the procedure for trial before the Court of Session, pursuant to an order of commitment under Section 209 of the Code, Section 227 contemplates the circumstances whereunder there could be a discharge of an accused at a stage anterior in point of time to framing of charge

under Section 228. It provides that upon consideration of the record of the case, the documents submitted with the police report and after hearing the accused and the prosecution, the court is expected, nay bound to decide whether there is "sufficient ground" to proceed against the accused and as a consequence thereof either discharge the accused or proceed to frame charge against him.

16. It is trite that the words "not sufficient ground for proceeding against the accused" appearing in the section postulate exercise of judicial mind on the part of the Judge to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. However, in assessing this fact, the Judge has the power to sift and weigh the material for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine a prima facie case depends upon the facts of each case and in this regard it is neither feasible nor desirable to lay down a rule of universal application. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced

before him gives rise to suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused. At this stage, he is not to see as to whether the trial will end in conviction or not. the broad test to be applied is whether the materials on record, if unrebutted, make a conviction reasonably possible. (*See State of Bihar v. Ramesh Singh and Prafulla Kumar Samal.*)

From close reading of the aforesaid paragraphs it appears that at the time of consideration of charge or while disposing of an application under Section 227 of the Code of Criminal Procedure the trial Court shall consider the record of the case, the documents submitted with the police report and will hear the accused and the prosecution. At the time of consideration of the charge the Court is required to see whether prima facie case has been established or not on the basis of the police report and the documents annexed therewith.

It is needless to say that the definition of rape in Section 375 has received a major change after Nirbhaya's case by virtue of Criminal Law Amendment Act, 2013 with effect from 3rd February, 2013. It is also prima facie found from the F.I.R. that if the accused commits oral sex and touches the private part of the victim, there

cannot be any injury in the private part and prima facie medical evidence may not be required to prove the said charge.

Considering the materials on record I do not find any illegality in the impugned order.

Accordingly, the instant criminal motion is summarily **dismissed.**

(Bibek Chaudhuri, J.)