

09.03.2022

Item No.6
Ct.No.34
dc.

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

C.R.R. 1143 of 2019

**Alokendu Chakroborty @ Bapi & Ors.
versus
The State of West Bengal & Anr.**

In Re: An Application under Section 482 of the Code of Criminal Procedure, 1973 filed for quashing of proceedings being S.C. Case No. 33/18 arising out of Taltala Police Station Case No. 146 of 2017 dated 02.03.2017 under Sections 306/34 of the Indian Penal Code.

Mr. Sekhar Basu, Sr. Adv.,
Mr. Sourav Chatterjee,
Ms. Subhasree Patel,
Mr. Saikat Mondal ... For the Petitioners.

Mr. Sudip Ghosh,
Mr. S. Sarkar ... For the State.

Md. Sabir Ahmed,
Mr. S. Sarkar ... For the Opposite Party No.2.

The present revisional application has been preferred challenging the proceedings relating to S.C. Case No. 33/18 arising out of Taltala Police Station Case No. 146 of 2017 dated 02.03.2017 under Sections 306/34 of the Indian Penal Code.

Mr. Basu, learned senior advocate appearing for the petitioners submits that the petitioner no.3 is presently residing in the United Kingdom with her family and the instant case was initiated out of her family dispute. The learned senior advocate submits that *prima facie* the allegations made in the letter of complaint along with the materials which have been collected by the investigating agency as also the contents of the alleged suicidal note fail to

make out any offence so far as all the petitioners are concerned.

Mr. Ahmed, learned advocate appearing for the private opposite party no.2 opposes such contention of the petitioners and submits that the present petitioners had a definite role in ending the life of the victim.

Mr. Ghosh, learned advocate appearing for the State draws the attention of this Court to the statement of the witnesses as also the suicidal note which was collected in course of investigation. Learned advocate emphasises on the chronology of the incidents which have been reflected in the said suicidal note and submits that at the initial stage, prosecution must be granted opportunity to prove its case.

I have considered the materials appearing in the case diary particularly, the statement of the witnesses and the corroboration which is available over there so far as statements recorded under Section 161 of the Code of Criminal Procedure are concerned. Although an issue was raised by the learned senior advocate appearing for the petitioners regarding the manner in which the suicidal note was seized and the same not being compared with the original or sent to any expert for ascertaining regarding the handwriting of the author of the said document, I do not think that this is a proper stage for argument of the case as it is upon the prosecution to decide after collection of the document, how they intend to rely upon the same in course of trial. A court cannot be an advisor either to the prosecution

or to the accused. Having considered the materials available in the case diary particularly, the statements relied upon by the prosecution under Section 207 of the Code of Criminal Procedure, I do not find any illegality in the order passed by the learned sessions court wherein the learned sessions court was pleased to reject the application under Section 227 of the Code of Criminal Procedure of the present petitioners herein. Accordingly, no interference is required.

However, as the petitioner no.3 is a young lady having a new family and presently she is settled in the United Kingdom, I am of the opinion that in case, she is represented by a lawyer in day-to-day proceedings and an undertaking is filed along with application under Section 205 of the Code of Criminal Procedure that she will not challenge her identity or raise any point in appeal/revision in any higher forum as the evidence has been recorded in her absence she has been prejudiced and also that any step has been taken by the learned lawyer representing her without her consent, in that case the learned trial court would allow the petitioner no.3 to be represented through a lawyer and dispense with her personal appearance in day-to-day proceedings of the court until and unless the learned court is of the opinion that the proceedings cannot progress without her physical appearance.

Learned senior advocate for the petitioners submits that if on the very next date, the physical presence of the

petitioner no.3 is required, at least 60 days' time may be granted to her.

In view of such submission, I direct that in case, on the next date, which has been fixed, according to the learned advocate, on 05.04.2022, the petitioner no.3 is unable to present herself, the next date should be fixed in the first week of May 2022 so that the petitioner no.3 would be physically present on the said date fixed in the first week of May 2022. This is recorded on the basis of the undertaking given by the learned advocate appearing for the petitioner no.3.

With the aforesaid observations, the revisional application being CRR 1143 of 2019 is dismissed.

Interim order, if any, is hereby vacated.

All pending connected applications, if any, are consequently disposed of.

All parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

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

(Tirthankar Ghosh, J.)