

Form J(1)

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

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

CRR 1850 of 2022

**Sri Shakti Mallik @ Shakti Mullick
Vs.
The State of West Bengal & Anr.**

**For the petitioner : Mr. Aniruddha Bhattacharyya, Adv.,
Mr. Indranuj Dutta, Adv.,
Mr. Bikram Basak, Adv.,
Mr. Asmanur Quail, Adv.,
Mr. Uttam Mukherjee, Adv.**

**For the State : Mr. S. G. Mukherjee, Ld. P.P.,
Mr. Arijit Ganguly, Adv.,
Ms. Sujata Das, Adv.**

Judgement on : 22.07.2022.

Bibek Chaudhuri, J.

Way back on 22nd February, 1999, father of the victim girl lodged a written complaint in the jurisdictional Police Station alleging, *inter alia*, that the landlord of his tenanted house, namely, Hirendra Nath Seth committed rape upon his daughter on 17th February, 1999. On the basis of the said complaint, Police registered Sonarpur Police Station Case No. 55/1999 under Section 376 of the Indian Penal Code. On 10th June, 2020 charge-sheet was submitted against Hirendra Nath Seth @ Shakti Mallick under Section 376 of the Indian Penal Code.

The Trial Court framed charge against the accused on 13th March, 2002. Thereafter during last 20 years, prosecution failed to produce even a single witness for examination and the Learned Public Prosecutor-in-Charge of the Trial Court submitted in writing that no witness could be found in spite of the prosecution's best effort. The aforesaid fact is recorded vide order dated 11th June, 2015 passed by the Trial Court. It is submitted by the Learned Advocate for the petitioner that the *de facto* complainant lodged the complaint against one Hirendra Nath Seth claiming his status to be the landlord of the tenanted house of the *de facto* complainant. However, during investigation, the Investigating Officer found that no person named Hirendra Nath Seth is the landlord of the *de facto* complainant and the name of the landlord of the *de facto* complainant is one Shakti Mallick. Hirendra Nath and Shakti are two different person but the Investigating Officer submitted charge-sheet against Hirendra Nath @ Shakti Mallick. Secondly, it is submitted by the Learned Advocate for the petitioner that as the prosecution failed to produce any witness for examination trial of the case ought to be closed and necessary order of acquittal should be passed against the petitioner if the Court finds that the case arising out of Sonarpur Police Station Case no. 55/1999 cannot be quashed.

On the last occasion, this Court directed the Learned Public Prosecutor-in-Charge to produce a report of the Inspector-in-Charge of Sonarpur Police Station. He submitted a report to the effect that in spite of thorough and repeated search neither the *de facto* complainant nor the victim girl could

be traced out and, therefore, they could not be produced before the Trial Court for recording their evidence.

I have considered the submission made by the Learned Counsels for the parties. On perusal of the charge-sheet it is ascertained that there are in all eight witnesses in the charge-sheet. During investigation, the victim girl was not examined medically in terms of the provision under Section 164A of the Code of Criminal Procedure though she was minor at the time of incident. Out of eight witnesses, two witnesses are police personnel. One charge-sheeted witness is a Judicial Magistrate. This Court finds that the prosecution could examine the police personnel and the Judicial Magistrate during trial of the case only because the victim girl and the *de facto* complainant were not examined as they are untraceable, a proceeding cannot be quashed.

In view of such circumstances though I am not inclined to quash the proceeding at this stage, it is directed that the Trial Court shall issue summons in the name of the Police personnel and the Judicial Magistrate for service in the name of the Superintendent of Police, Baruipur Police District within 15 days from the date of communication of this order.

The Superintendent of Police, Baruipur Police District is directed to take personal initiative for production of the above-named witnesses and the victim girl, if she is traceable on the next date of hearing.

Thereafter the Learned Trial Judge shall conclude the hearing of the case within one month from the date of communication of this order. The petitioner is at liberty to

communicate the server copy of this order for compliance by the Learned Assistant Sessions Judge, 2nd Court at Alipore.

The instant revision is, **disposed of** with the above direction.

Report submitted by the Inspector-in-Charge, Sonarpur Police Station be kept with the record.

The petitioner is at liberty to take proper step in accordance with law if the trial of the case is not complete by the timeframe as directed by this Court.

(Bibek Chaudhuri, J.)

**Srimanta, A.R.(Ct.)
Item No. 164.**