

16.11.2022

Court No.35
Item No. 3

d.g.

CRR 1463 of 2016

**Rajib Chowdhury @ Baban
Vs.
The State of West Bengal**

Ms. Karabi Roy.

... For the petitioner

Mr. Gouranga Kumar Das,
Ms. Swati Mondal.

... for the OP no. 2

Mr. Saswata Gopal Mukherjee, Id. PP.,
Mr. Imran Ali,
Ms. Debjani Sahu.

... for the State

The petitioner who is the accused person in Nakashipara Police Station Case No. 291 of 2011 dated 07.06.2011 has come up in this revision to challenge the criminal proceedings started against him, pursuant to the said FIR.

It is pertinent to mention that before filing of the revision, the investigation of the case was completed and the sessions case was committed to the Court of Additional Sessions Judge, Fast Track Court-II, Krishnanagar, Nadia. Charges were framed on 30th March, 2016 by the said Court, in the case under Sections 366 and 376 of the Indian Penal Code and the case was numbered as S.T. 9(3) of 2016. At this stage, the petitioner has moved this Court by dint of the present revision case which was filed on 27th April, 2016.

Complainant's case as narrated in his complaint submitted before the Magistrate under Section 156(3) of the Code of Criminal Procedure may be laid down in a nutshell as below:

The complainant happened to be a tenant of the accused person and used to live in the ground floor of his house along with his wife.

Complainant has stated that the accused person/petitioner has abducted his wife with ulterior motive and forcefully kept him in confinement and during the said period also raped her.

Complainant under Section 156 (3) of the Cr.P.C. was lodged on 24th March, 2011 in the Court of learned Chief Judicial Magistrate, Nadia and by dint of Court's order a specific police case was registered as mentioned above under Section 366 and 376 of the Indian Penal Code dated 07.06.2011.

Petitioner/accused person is aggrieved of initiation of a police case as mentioned above against him. On the ground that he has never been involved in any offence as alleged against him and if ever he had lived and cohabited with the wife of the complainant, it was only a consensus relationship to which both the parties voluntarily agreed and consented. It is his ground that the complainant, only out of grudge and vengeance, has put up baseless charges against him which can never be substantiated against him and the entire criminal proceeding is only malicious and revengeful. On this ground he has prayed for quashment of entire criminal proceeding against him.

State as well as the complainant have appeared in the case to contest and raise objections as to the grounds and prayer of the petitioner.

Learned Advocate appearing for the petitioner has emphatically submitted particularly on the basis of the complaint and also victim's statement recorded under Section 164 of the Cr.P.C. before the Magistrate, that, the present case was not of any abduction as alleged against her client but it is a case of eloping by the wife of the complainant with the petitioner. She has pointed out that the victim has never expressed about exercise of any force, coercion and threat by the present petitioner in keeping her under the same roof with him, which according to her is only fallacious to say that she has been kept in confinement by the petitioner. It is stated further that the FIR was lodged at a belated stage that is after about one month from the date of

alleged incident and also that victim has returned back to her matrimonial home after about 5-6 months of voluntarily staying together with the petitioner.

By pointing out to the statement of the victim recorded under Section 164, Cr.P.C., it has been categorically submitted that no material as to the unwillingness of the victim or exercise of any force upon her by the petitioner could be found therefrom.

It is further submitted that the petitioner and the wife of the complainant, if at all stayed together, at any point of time, had done so only voluntarily, according to their own will and any cohabitation if made during the said period between those cannot be termed as “rape” within the four corners of definition and meaning as envisaged in the Indian Penal Code, 1860 (as amended).

Ms. Roy on behalf of the petitioner has also pointed out to the statement of the witnesses made before police during investigation that even after they were separated, according to the witness the victim came back to the place of residence where the petitioner and the victim used to stay, in order to find out the petitioner’s whereabouts. It is suggested that the said statement of the witness is eloquent enough about the voluntariness of the victim’s action as to her togetherness with the present petitioner.

To further strengthen her client’s case Ms. Roy has referred to the following two judgments:-

- i. ***Dr. Dhruvaram Murlidhar Sonar vs. The State of Maharashtra & Ors.*** reported in ***(2019) 1 C Cr LR (SC) 138.***
- ii. ***Puran Giri vs. State of West Bengal & Anr.*** reported in ***2016 CRI.L.J. 2475. (Calcutta High Court, Single Bench).***

In the judgment of 2019, the Hon’ble Supreme Court considered the allegations in a FIR under Section 376 (2)(b) of the Indian Penal

Code, in particular if it has sufficiently been alleged in the FIR to constitute a *prima facie* offence against the accused person therein. Relevant paragraphs are relied on to show that the Hon'ble Court proceeded to hold it to be difficult that sexual intercourse in the course of relationship which has continued for eight years to be "rape" especially in the face of the complainant's own allegation that they live together as man and wife. It was further held that there may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do.

The Court held that the said case was not a case of passive submission in the face of any psychological pressure exerted from the victim and there was a tacit consent which was given not out of any misconception but voluntarily. Upon the findings as mentioned above, the Hon'ble Court found the criminal proceeding initiated against the accused person to be not maintainable.

Ms. Roy submits that ratio of this decision squarely applies to the case of his/her client, in so far as the present case is also based upon non-consideration of the fact by the Court as well as Investigating Authorities that the parties maintained as voluntary and consensus relationship for a sufficiently long period of time.

In the case of 2016 this High Court has dealt with a matter of similar nature where the Court held that the FIR on the face of it does not show any ingredient of offence of rape against the accused person therein. During the discussion the Court has referred to several other judgments of the Higher Courts including the ***State of Haryana vs. Vajanlal*** reported in ***AIR 1992 SC 604***, particularly to mention the guidelines framed therein in order to exercise the plenary power of this Court under Section 482 of the Code of Criminal Procedure in an appropriate case. By relying on the said judgment, it has been

submitted that in the present case also there is no prima facie material against the petitioner so far as the alleged offence is concerned and in view of such fact, the entire criminal proceeding as against him should be set aside.

The opposite parties have raised strong objection to the submissions made on behalf of the petitioner. The State has relied on the documents available in case diary to submit that the complaint and the materials collected during investigation are sufficiently eloquent to suggest strongly about the guilt of the accused person and the offence committed by him as mentioned above. According to both the State and the private opposite party, there would be no material for the petitioner to avail an order as prayed for in this case.

Upon hearing the parties, it is found that the sole question lies as to whether the complaint against the petitioner sufficiently shows existence of materials as regards the aforementioned provisions of law in the complaint against the petitioner, at least, prima facie or not. Be it mentioned here, that the case has now proceeded to the stage of trial and the trial has already begun.

After perusing the documents available before me in record and in case diary, I am however, unable to concur with the submissions made before me on behalf of the petitioner that the same would go on to show about only consensus relationship between the petitioner and the victim.

Considering the statement made by the complainant in his complaint as well as the statement of the victim recorded under Section 164 of the Code of Criminal Procedure, I do not find any mention of any affair existing from a previous date between the petitioner and the victim or any statement as to her voluntariness to the cohabitation with the petitioner.

On the contrary she mentions that she has been taken by the petitioner. Not to overlook is the medical report available in case diary

which duly corroborates victim's statement. And also last but not the least, in this case trial has already commenced, as submitted on behalf of opposite party no. 2.

While exercising power under Section 482 CrPC, this Court is ordinarily to look into if the information initiating criminal proceeding, the allegations made, constitute an offence or not. Truthfulness of such allegations are subject to be proved during trial. Satisfaction of this Court as to the prima facie materials to have been disclosed as to the offence alleged would be sufficient to pass an order of quashment of the criminal proceedings. This settled proposition of law has been upheld in the judicial pronouncements, as relied on in this case.

Under such circumstances, in my considered opinion, the ratio of the judgments as above, in both of which the Hon'ble Courts have dealt with a case of voluntary and consensus relationship, do not apply to the facts of this case. Instead I find it proper to mention the relevant portion from the 1992 judgment of the Hon'ble Supreme Court as mentioned above where upon finding prima facie material and taking the averments of the complaint at their face value offence has been found to be made out against the accused persons and to proceed against him.

In the discussion as above, I am constrained to hold that the complaint in this case suffers from no shortcomings as envisaged in law, to be considered not a fit one to proceed against accused person.

Hence, the prayer of the petitioner is not legible to be allowed.

On the discussion as above, CRR 1463 of 2016 is dismissed.

Pending application, if any, is consequently dismissed.

Case diary be returned.

However, in consideration of the time gap which is already there, the Trial Court is requested to complete the trial, as expeditiously as

possible.

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

(Rai Chattopadhyay, J.)