

14.07.2022

BP
Sl. 226
Court no.42.

CRR 2072 of 2022

In re: An application under Section 482 of the
Code of Criminal Procedure.

In the matter of: Tushar Kanti Ghosh
...petitioner

Mr. Animesh Paul
..for the petitioner.

Charge Sheet No.9 of 2022 dated 22nd January,
2022 in connection with Haroa Police Station Case No.
391 of 2021 dated 12th September, 2021 under
Sections 448/376/511/506 of the Indian Penal Code
pending before the Learned Additional Chief Judicial
Magistrate, Basirhat is sought to be quashed by the
petitioner.

It is submitted on behalf of the petitioner that
the husband of the defacto complainant/opposite
party no.2 is a habitual offender of cutting
embankment of a river in the locality. Since 2017
series of complaints were made against the husband
of the opposite party no.2. The opposite party no.2
filed an application under Section 156(3) of the Code
of Criminal Procedure against the petitioner as a
matter of retaliation. No such incident took place as

alleged by the opposite party no.2. During investigation of the case, the opposite party no.2 refused to record her statement under Section 164 of the Code of Criminal Procedure. In the charge sheet there are only four witnesses beside the defacto complainant and the said witnesses are in one way or other connected with cutting of earth from the embankment of the river in which the husband of the opposite party no.2 was charged. Therefore, the petitioner has sought for quashing of the entire proceeding arising out of Charge Sheet No. 9 of 2022 dated 22nd January, 2022 on the ground that the proceeding is false and vexatious in nature.

On filing of chargesheet, it is assumed that a prima facie case has been established against the petitioner. In a case under Sections 376/511 of the Indian Penal Code recording of statement under Section 164 of the Code of Criminal Procedure is not obligatory if the victim denies to give any statement under Section 164 of the Code of Criminal Procedure, the effect of such refusal shall be considered by the trial court at the time of recording evidence. Whether the petitioner filed a false and vexatious complaint against the petitioner is to be determined on the basis of the evidence adduced by the witnesses during trial.

Considering all such aspect of the matter, I do

not find any merit in the instant revision and accordingly the instant application is summarily dismissed.

(Bibek Chaudhuri, J.)

