

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:
THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 2131 of 2002

MAHANANDA SINGH
VS.
STATE OF WEST BENGAL

For the Petitioner : Mr. Milon Mukherjee, Sr. Adv.
Mr. Sandipan Ganguly, Sr. Adv.

For the Opposite Party : Md. Anwar Hossain, Adv.
Ms. Manisha Sharma, Adv.

Hearing concluded on : 10th November, 2022

Judgement on : 21st November, 2022

Siddhartha Roy Chowdhury, J.:

1. By this proceeding under Section 397/401 read with Section 482 of the Criminal Procedure Code, the petitioner assails the judgement and order passed by learned Fast Track, 3rd Court, Alipore in Criminal Appeal No. 43 of 2002 thereby affirming the order of conviction passed by learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas on 10th May, 2002 in T.R. Case No. 468 of 1991.
2. Briefly stated, on 10th May, 1998 a boy aged about 15 years was sleeping with one Manik on the roof of the Ekbalpur Police Station. In the witching hour of night Mahananda Singh, a Police Constable dragged him to the corner of the roof and had carnal intercourse with the boy. At that point of time Sweeper, Netrapal saw the incident and

Mahananda Singh fled away. The boy then went to his bed and laid down by the side of Manik. Kanai Pal did not disclose the incident to any person out of fear and shame. Kanai Pal went to his native village with the son of the owner of the Tea Stall. On 14th May, 1998 Ekbalpur P.S. Case No. 66 of 1998 was registered on the basis of information given by Kanai Pal. Police took up investigation which culminated into submission of charge sheet against the accused person under Section 377 of the I.P.C. The accused person being charged pleaded his innocence and claimed to be tried.

3. Learned Trial Court after considering the evidence both oral and documentary led by prosecution witnesses found the charge to have been established under Section 377 of I.P.C. and he recorded an order of conviction. The convict, Mahananda Singh made an unsuccessful attempt to get the order of conviction reversed by preferring an appeal being no. 43 of 2002. Learned Sessions Judge, Fast Track, 3rd Court, Alipore dismissed the appeal and affirmed the order of conviction. Challenging the order of the Appellate Court the convict filed this application under consideration.
4. From the attending facts of the case it is admitted that Mahananda Singh the convict engaged himself with carnal intercourse on the roof of the Ekbalpur Police Station with Kanai Pal, a minor, who adduced evidence as P.W.6. From his oral testimony I find that on 10th May, 1998 at about 2.00/2.30 a.m. Mahananda Singh took him to a corner of the roof, disrobed the boy, removed his wearing apparel and inserted his pennies into the rectum of the boy. Netrapal, the Sweeper of the Ekbalpur Police Station who was also on the roof, saw the incident and

raising his voice he wanted to know who were there. Mahananda Singh evacuated the place then and there. Kanai Pal was ashamed of the incident and he could not say anything to Netrapal. He went back to his native village with the owner of the Tea Stall and after three days he was brought back and was taken to Dhruba Ashram. One officer of Ekbalpur Police Station wrote a paper and he put his signature on the said paper. The said document was admitted into evidence as Exhibit-5. During cross-examination he stated that he did not narrate the incident either to the owner of the Tea Stall Kalipada or to any police personnel.

5. The evidence of P.W.5 has been referred to by me to find out if there was any attempt on the part of the boy to resist Mahananda Singh or not, or in other words whether Mahananda Singh applied force to the boy or not.
6. Evidence is to be considered from the point of view of human probability and when we consider the testimony of Kanai Pal, P.W.6, I did not find from his reaction when he was taken to the other corner of the roof by Mahananda Singh that he was surprised after found something unusual rather his reaction speaks otherwise. The case was registered on the basis of the purported statement written by one Sub-Inspector of Police, Dhirendranath Kumbhakar whom Kanai Pal, P.W.5 refer to as the Second Officer or Mejo Babu. The said S.I. of Police took up the investigation. While adducing evidence as P.W. 7, said Mr. Kumbhakar stated that on 14th May, 1998 he was posted at Ekbalpur Police Station and on that day he recorded the statement of Kanai Pal which was treated as FIR. On the basis of said FIR he prepared formal

FIR. Netrapal the other witness to the incident adduced evidence as P.W.1 and he stated that on the date of incident he was also sleeping on the roof of the Ekbalpur Police Station along with Kanai Pal. He woke up to urinate and found one Lungi and brief. He found the boy was lying on the bed on his belly wearing a napkin while Mahananda Singh was over the boy. He did not disclose the incident to anyone immediately thereafter. The narrative of P.W.1 and P.W.5 Kanai Pal if considered together, I do not find anything to indicate that force was applied by Mahananda Singh. But considering the age of the boy it cannot be said that it was consensual sexual act of two adults in private. Therefore, I feel no hesitation to hold that learned Appellate Court was justified in passing the judgement impugned affirming the order of conviction.

7. Mr. Milon Mukherjee, learned Senior Counsel representing the petitioner submits that Mahananda Singh, the petitioner has been dismissed from service on 18th December, 2002 vide PD DO No. 1055 dated 18th December, 2002.
8. Under such circumstances taking into consideration that the convict has been suffering the order of sentence for last twenty years. I am inclined to modify the sentence and direct the petitioner to suffer imprisonment for the period already undergone and pay fine of Rs. 6000/- in default to suffer simple imprisonment of one month.
9. With the aforesaid observation the Criminal Revision is disposed of.
10. Let a copy of this judgement be sent down to learned Trial Court along with lower Court record for information and taking necessary

action. Learned Trial Court, in case of non-payment of fine, will be at liberty to take coercive measure according to law.

11. Parties are to act on the server copy of this judgement.
12. Urgent Photostat certified copy of this judgement, if applied therefor, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)