

08.07.2022

CRM 2282 of 2021

**In the matter of: Mohan Biswas
.....petitioner.**

For the petitioner: Mr. Dhananjay Banerjee, Adv.,
 Ms. Oindrila Ghosh, Adv.,
 Ms. Ankita Majhi, Adv.

Legality, validity and propriety of order No.2 dated 30th April, 2022 passed by the learned Additional Sessions Judge, Kalna in ST No.26(04) of 2022 arising out of Sessions (Special) Case No.17 of 2020 corresponding to Purbasthali P.S Case No.212 of 2020 dated 1st October, 2020 under Sections 341/376AB read with Section 6 of the Protection of Children from Sexual Offences Act is under challenge in the instant criminal revision.

It is alleged on behalf of the petitioner/accused of the above mentioned special case that during trial of the said Sessions Trial No.26(04) of 2022 the defence confronted the signature of the victim girl in her statement recorded under Section 164 of the Code of Criminal Procedure. It is alleged by the petitioner that the victim girl put her signature after deposition which is completely different from the name recorded in her statement recorded under Section 164 of the Cr.P.C. In order to show said discrepancy, prayer was made at the time of recording evidence of the victim girl to mark her signature in her statement under Section 164 of the Cr.P.C as exhibit. The learned trial judge rejected the said prayer made on behalf of the petitioner on the ground that the petitioner can agitate the issue at the time of argument.

Learned Advocate for the petitioner submits that the petitioner apprehends as to whether the statement of the victim girl was at all recorded under Section 164 of the Cr.P.C or another girl was produced before the learned Magistrate as the victim girl and her tutored statement was recorded under Section 164 of the Cr.P.C. For this reason the signature of the victim girl in her statement under Section 164 of the Cr.P.C was sought to be exhibited with objection. But the learned trial court refused the prayer made on behalf of the petitioner on this behalf.

In Bipin Shantilal Panchal vs. State of Gujarat & Anr. reported in **(2001) 3 SCC 1**, the issue as to whether a piece of evidence ought to be recorded with objection or a document is to be marked after objection came up for consideration before the Hon'ble Supreme Court. It was held by the Hon'ble Supreme Court in the said report that it is an Archaic practice that during the evidence-collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the court does not proceed further without passing order on such objection. Such practices when realized through the course of long period to be hindrances which impede steady and swift progress of trial proceedings must be recast or remoulded to give way for better substitutes which would help acceleration of trial proceedings.

When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence-taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the judge or Magistrate can keep such

evidence excluded from consideration. There is no illegality in adopting such a course.

The above principle is squarely applicable in the case in hand. The learned trial judge ought to have exhibited the signatures of the victim girl in her statement recorded under Section 164 of the Cr.P.C with objection raised on behalf of the prosecution. Thereafter, the learned trial judge could have decided the issue as to whether the objection in marking the signature of the victim girl in her statement under Section 164 of the Code of would be sustained or not.

In view of the above legal position, I have no other alternative but to set aside the impugned order dated 30th April, 2022.

The instant revision is accordingly allowed.

The learned trial judge is directed to mark the signatures of the victim accordingly in her statement under Section 164 of the Cr.P.C as exhibit with objection.

(Bibek Chaudhuri, J.)