

17.11.2022

Item No.33
Ct.No.34
dc.

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

C.R.R. 1918 of 2021

**Md. Zaid
versus
The State of West Bengal & Anr.**

In Re: An Application under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973.

Md. Sabir Ahmed,
Mr. Sujan Chatterjee ... For the Petitioner.

Mr. Ranadeb Sengupta ... For the State.

Mr. Ivan Roy,
Mr. Debangshu Bandhu,
Sk. Abdul Rahim ... For the Opposite Party No.2.

Mr. Ahmed, learned advocate appearing for the petitioner challenges the order dated 13.09.2021 passed by learned Special Court under POCSO Act cum Additional Sessions Judge, 1st Court, Sealdah in connection with Special Trial No. 4(09)2021/Special Case No. 13 of 2021 arising out of Entally Police Station Case No. 123 of 2021 dated 23.03.2021 wherein the learned Special Court was pleased to frame charges under Sections 498A/323/341/506 of the Indian Penal Code read with Section 4 of the Dowry Prohibition Act and Section 10 of the POCSO Act.

Mr. Ahmed points to the statement of the complainant under Section 164 of the Code of Criminal Procedure as well as the opinion expressed by the learned Judicial Magistrate who was delegated to record the statement of the child under Section 164 of the Code of Criminal Procedure. The learned

advocate submits that both these two statements are part of the documents under Section 207 of the Code of Criminal Procedure and the intrinsic value of the same do rule out any possibility under Section 10 of the POCSO Act.

Per contra, Mr. Sengupta, learned advocate appearing for the State draws the attention of the Court to the letter of complaint which was the genesis of the case along with the statement of other witnesses. The learned advocate submits that the trial has progressed and already evidence of the complainant as well as examination-in-chief of the parents of the complainant is over.

Learned advocate appearing for the private opposite party no.2 disputes the factual circumstances placed by the learned advocate appearing for the petitioner.

Mr. Ahmed, learned advocate for the petitioner draws the attention of the Court to the fifth charge which has been drafted by the learned Special Court wherein the learned court has referred to charge under “Section 4 of the Domestic Violence Act”.

Learned court should have been cautious while signing such an order of framing charge as the same has long term repercussions. Let it be corrected and be treated as “Section 4 of the Dowry Prohibition Act, 1961”.

In view of the fact that the evidence of the case has progressed and almost three witnesses who have been examined, I do not intend to send back the clock to an earlier date. Even though charges have been framed, the learned

trial court is directed that the applicability of the said Sections should finally be considered, if at all, at the end of the trial. No interference can be made at this stage in the midst of the trial.

With the aforesaid observations, the revisional application being CRR 1918 of 2021 is disposed of.

All pending connected applications, if any, are consequently disposed of.

All parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)