

Form J(1)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

CRR 2444 of 2022

**Sagar Mishra
Vs.
The State of West Bengal & Anr.**

**For the petitioner : Mr. Aniket Mitra, Adv.,
Mr. Sk. Sahjahan, Adv.**

**For the State : Ms. Faria Hossain, Adv.,
Ms. Mamata Jana, Adv.**

Judgement on : 21.09.2022.

Bibek Chaudhuri, J.

Affidavit-of-service filed in Court today be kept with the record.

The petitioner being the accused in ST Case No. 261/2022 pending before the Learned Additional Sessions Judge, 2nd Court at Contai has approached this Court for quashing of the said proceeding on the ground that the petitioner is being tried under the charge of 376/417 of the Indian Penal Code. The fact remains after the alleged incident of consensual physical relationship between *the de facto* complainant/victim and the petitioner, their marriage was solemnized. They stayed together for three years as husband and wife. Subsequently, the parties filed an application under Section 13B of the Hindu Marriage Act praying for mutual divorce. The said suit is

pending. In the meantime, in ST Case No. 261/2022 charge under Sections 376 and 417 was framed against the petitioner. Trial of the case was commenced. After framing of charge, the petitioner moved this Court in revision which was registered as CRR No. 702/2021 for quashing the said proceeding. A Coordinate Bench of this Court was pleased to dispose of the said revisional application with a liberty to the petitioner to approach this Court after the evidence of victim of CSW 1 is over.

Victim's evidence was recorded in the Trial Court. Thereafter, the petitioner filed the instant criminal revision praying for quashing of ST Case No. 261/2022.

Indisputably trial of ST Case No. 261/2022 is proceeding. There are other witnesses who need to be examined. At the stage of trial, a criminal case cannot be quashed invoking Section 482 of the Code of Criminal Procedure. After trial, it is within the jurisdiction of the Trial Court to either acquit the accused or to convict him. This Court is not in a position at this stage to appraise the evidence of CSW 1 and come to a finding as to whether the petitioner is entitled to an order of acquittal or not.

In view of such circumstances, I do not find any merit in the instant revision. Hence, the same revision is rejected.

However, in view of the fact that the *de facto* complainant has already been examined, the Learned Trial Judge is within his jurisdiction to consider as to whether the evidence of other witnesses would be necessary to prove the charge against the accused or not. If he finds on his independent appraisal of the facts and circumstances of the case that continuation of the criminal proceeding against the accused will be a futile attempt and consequently

miscarriage of justice, he is at liberty to pass appropriate order in accordance with law.

With the above observation, the instant revision is dismissed.

(Bibek Chaudhuri, J.)

Srimanta, A.R.(Ct.)
Item No.02 .