

Form J(1)

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

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

CRR 2547 of 2022

**Sandip Roy Choudhury
Vs.
The State of West Bengal & Anr.**

Mr. Ayan Bhattacharya
Mr. Shubhojyoti Dutta
Ms. Swati Bhattacharya
..for the petitioner

Item No. 15.

Heard & Judgment on: 29.11.2022

Bibek Chaudhuri, J.

It is submitted by the learned advocate for the petitioner that as per F.I.R. the de facto complainant was the married wife of the petitioner. Their marriage was solemnized in the year 2013 and it was dissolved in the year 2016. Two years after

divorce the petitioner again prayed for mercy and wanted to stay with the de facto complainant together. The de facto complainant allowed. They started living like husband and wife and during such relationship the de facto complainant gave birth to a girl child. It is alleged that after the birth of the said girl child the petitioner physically assaulted her time and again and also wrongfully confined her.

On the basis of the said complaint Sonarpur Police Station Case No.929 of 2020 dated 13th November, 2020 was registered and on completion of investigation police submitted charge sheet under Sections 341/323/354 of the Indian Penal Code. It is submitted by the learned advocate for the petitioner that when a grown up and major man and woman voluntarily live together and as a result of such living the woman gives birth to a child there cannot be any allegation under Section 354 of the Indian Penal Code. If the penal provision of Section 354 of the Indian Penal Code is left out, remaining allegations are non-cognizable in nature. Therefore, the criminal proceeding may be quashed. It is ascertained from the submission made by the learned advocate for the petitioner that the learned advocate has raised a question of competency of a police officer to investigate into

the case on the basis of the F.I.R. submitted by the de facto complainant.

It is needless to say that if the Investigating Officer at the time of registration of a police case is of the view that some cognizable and non-cognizable offence was made by the accused, he is competent to investigate even the non-cognizable offence without permission of the learned Magistrate along with the cognizable offence. On completion of investigation police submitted charge sheet under Sections 341/323/354 of the Indian Penal Code.

Under such circumstances, this Court cannot at this stage hold that the charge sheet is bad. It is for the trial Court to consider at the time of consideration of charge as to whether penal provision of Section 354 of the Indian Penal Code will attract against the petitioner or not. At this stage, I do not find any material to admit the instant revision for quashing the criminal proceeding pending in the trial Court.

Accordingly, the instant revision is summarily **dismissed**.

It is made clear that the observation made hereinabove is confined only for the purpose of disposal of the instant revision and the learned Magistrate shall consider all such points as may

be taken by the accused without being prejudiced or swayed over in any manner on the observation made in the instant order.

(Bibek Chaudhuri, J.)