

16.12.2022
Item No. 06
BR

CRR 1968 of 2010

In the matter of : Jaidur Haque

Mr. Karan Dudhwewala
.... Amicus Curiae

MD. Anowar Hossain,
Ms. S.Biswas
.... For the State

This criminal revision under Section 482 of the Cr P C is filed challenging the order dated 7th May, 2010 passed by learned Additional Sessions Judge , Special Court , Dakshin Dinajpur in Sessions Case No. 234 of 2009 arising out of GR Case No. 62 of 2009 and (Tapan P.S. Case No. 11 of 2009 dated 20th January, 2009 whereby the prayer of the accused under Section 71 of the Juvenile Justice (Care & Protection) Act, 2000 was turned down.

Briefly, stated Rumali Bewa, of widow of Hafejul Ali informed the Officer-in-Charge of Tapan P.S. case in writing stating inter alia that she indulged in sexual intercourse with Jaidur Haque son of Abdul Mannan who promised to marry her. The lady became pregnant and when she was insisting Jaidur Haque

her partner to marry her the boy durned a deaf ears. The information report to the police authority disclosed offence cognizable in nature and accordingly Tapan P.S. Case No. 11 of 2009 was registered on 20th January, 2009 under Sections 417/376 of the Indian Penal Code. Police took up the investigation and submitted charge sheet. Jaidur Haque depicting him as a boy of 19 years. The accused persons surrendered to the jurisdiction of learned trial Court and took out a petition seeking benefit of being juvenile when the incident allegedly took place for the first time three years previous of lodging the FIR. Learned trial Court however by passing a dictated order refused to accept the plea of juvenility of the accused persons which is the subject matter of this criminal revision. From the attending facts of the case it is admitted that the informant was aged about 22 years who indulged in sexual intercourse with a boy who was minor at the relevant point of time. At the time of their teenage adventure the complainant was 19 years old while the accused was 16 years old and she was widow. Therefore, it can safely be presumed that she was quite aware of the consequence of physical relationship with a boy. Section 90 of the Indian Penal Code cannot be pressed into service to her benefit. The consent of boy being minor cannot be taken into consideration as

his consent. When knowing fully well the lady who was an adult indulged in sexual relationship. The alleged incident cannot be brought within the purview of Section 375 of the Indian Penal Code and consent of the accused.

Mr. Karan Dudhwewala, learned Amicus Curiae as well as Mr. Anwar Hossain representing the State are in agreement that there is no ingredient of offence within the meaning of Section 375 of the IPC and in support of their contention both Mr. Anwar Hossain and Mr. Dudhwewala relied upon a judgment of Hon'ble Supreme Court pronounced in the case of Shambhu Kharwar -vs- State of Uttar Pradesh and anr., reported in 2022 SCC Online SC 1032 where Hon'ble Apex Court was pleased to quash the proceeding on the ground that the allegation made in the first information report or the complaint does not constitute prima facie offence or does not make out a case against the accused person. Since the FIR ex facie does not constitute an offence within the meaning of Section 375 of the IPC, though the petitioner challenged the legality of an order passed on 7th May, 2010, I am inclined to quash the entire proceeding being GR Case No. 62 of 2009 pending before the learned Additional District and Sessions Judge, Special

Court , Dakshin Dinajpur being SC Case No. 234 of 2009 to avert the abuse of process of law .

Before I conclude I extend my sincere thanks to Mr. Karan Dudhwewala who has helped the Court as Amicus Curiae in arriving at a just decision .

The criminal revision is, thus disposed of.

Let a copy of the judgment be sent down to the learned trial Court for information and necessary action.

All parties are to act on the server copy of this order duly downloaded.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Siddhartha Roy Chowdhury, J.)