

08.04.2022

Item No.16
Ct.No.34
dc.

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

C.R.R. 2251 of 2019

**Somnath Chatterjee
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 filed in connection with Santiniketan Police Station Case No. 01 of 2015 dated 23.09.2015 (G.R. Case No. 884 of 2015) under Sections 406/420/493/376/504/506 of the Indian Penal Code.

Mr. Tapas Kumar Ghosh,
Mr. Tanmoy Chowdhury ... For the Petitioner.

Mr. Abhra Mukherjee,
Mr. Dipankar Mahata ... For the State.

Copy of the report dated 07.04.2022 submitted by Mr. Mahata, learned advocate appearing for the State be kept on record.

The grievance of the present petitioner relates to an order dated 12.06.2019 passed by learned Judicial Magistrate, 2nd Court, Bolpur in connection with Santiniketan Police Station Case No. 01 of 2015 wherein after the case was remanded by the learned Sessions Judge, the learned Judicial Magistrate, 2nd Court, Bolpur was pleased to frame charge under Sections 417/504 of the Indian Penal Code.

Pursuant to the records being remanded and charge being framed under the aforesaid Sections, the PW-1 elaborately deposed before the learned Judicial Magistrate, 2nd Court, Bolpur. After the examination-in-chief was over,

the learned public prosecutor preferred an application for addition of Section 376 of the Indian Penal Code.

The learned trial court on an appreciation of the materials surfacing interpreted Section 90 of the Indian Penal Code in respect of consent obtained by fraud and arrived at its conclusion that materials have surfaced to attract the provisions of Section 376 of the Indian Penal Code. The learned trial court thereafter resorted to Section 323 of the Code of Criminal Procedure and allowed the prayer of the learned additional public prosecutor thereby committing the case under Section 323 of the Code of Criminal Procedure.

The deposition and the foundation on which the learned Magistrate was of the opinion that the provisions of Section 376 of the Indian Penal Code is attracted were earlier there on records when the learned sessions court considered the issue of charge.

I have taken into account the oral deposition of the P.W.-1 and the order passed by the learned sessions court remanding the case to the learned Magistrate's court and I am of the view that in order to come to a finding which is different from that of the learned sessions court which was passed at the stage of consideration of charge, the learned Magistrate ought to record the distinguishing depositions which are appearing and which is distinguishable from the materials which were appearing prior to consideration of charge. The order passed by the learned Magistrate does not lay down the factual foundation for committing the case to

the court of sessions as already higher court has observed regarding the charges to be framed.

In view of the aforesaid, I set aside the order dated 12.06.2019 passed by the learned Judicial Magistrate, 2nd Court, Bolpur and direct the learned trial court to pass a fresh order relating to the extract from the deposition which would distinguish the case from the pre-charge stage so as to establish a different opinion than that of the sessions court which remanded the matter for trial before a Magistrate.

With the aforesaid observations, the revisional application being CRR 2251 of 2019 is disposed of.

Interim order, if any, is hereby vacated.

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.)