

D/L16
03.11.2022
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C.R.R.2371 of 2021

In Re: An application under Section 482 of the Code of Criminal Procedure, 1973;

Arun Das
Versus
The State of West Bengal and others

Mr. Deepak Prahladka,
Ms. Reshmi Khatun.
...for the petitioner.

Mr. Ranabir Roy Chowdhury,
Mr. Mainak Gupta.
...for the State.

Mr. Ayan Bhattacharjee,
Mr. Avik Ghatak,
Mr. Saibal Kr. Dasgupta,
Ms. Ritu Das.
...for the opposite party nos.2 and 3.

Mr. Deepak Prahladka, learned advocate appearing for the petitioner submits that the order dated 21.09.2021 by which the learned special court framed charges against the opposite party nos.2 and 3, i.e. Madhuri Kenedy and Sushila Mallick were restricted to only Sections 341/34 and 506/34 of the Indian Penal Code. Learned advocate further submits that, in view of the materials already available on record, the charges of abetment under the POCSO Act should have been framed against the said accused persons which the learned trial court ignored and restricted the charges only in respect of the Indian Penal Code offences.

Mr. Ayan Bhattacharjee, learned advocate appearing for

the private opposite party nos.2 and 3 contends that already three witnesses have been examined during the pendency of the revisional application before the Special Court. The said witnesses being one Manoj Das, Bipasa Ray and Sourav Chowdhury. It has been stated that the aforesaid witnesses were the staff of the school and the hostel. The resistance given by the learned advocate appearing for the private opposite party nos. 2 and 3 are to the effect that in case charges are altered at this stage, the accused opposite party nos.2 and 3 would be seriously prejudiced as they have already cross-examined the three witnesses whose evidence in dock has been completed.

Mr. Ranabir Roy Chowdhury, learned advocate appearing for the State produces the case diary. Learned advocate for the State has also drawn the attention of this Court to the statement of the victim girl under Section 164 of the Code of Criminal Procedure and other relevant materials appearing in the case diary.

I find substantial force in the submission of Mr. Prahladka, learned advocate appearing for the petitioner particularly for non-framing of charges under Section 17 of the POCSO Act in respect of the accused/opposite party nos.2 and 3 in the background of the contents appearing in the statement of the victim girl under Section 164 of the Code of Criminal Procedure.

However, three witnesses have already been examined. It has been informed to this Court that the next date has been fixed on 9th November, 2022 for examination of the victim girl. Learned trial court after examination-in-chief of the victim girl would

consider whether the charge under Section 17 of the POCSO Act are applicable in respect of the accused/opposite party nos.2 and 3 and in case the same is applicable, the learned special court would apply the provisions of Section 216 of the Code of Criminal Procedure and if required afford opportunity to the accused persons to further cross-examine the witnesses already examined. Needless to state that the accused Munna Kenedy is in custody in relation to the instant case he may also be afforded opportunity of cross-examination in case the learned trial court/special court decides to recall three witnesses whose evidence has already been closed. The chronology which the special court is required to follow is set out as below:

- (i) On 09.11.2022 the examination-in-chief of the victim should be completed and thereafter the learned trial court would consider the charges as directed above.
- (ii) In case the trial court decides to amend the charges, the cross-examination of the victim should be completed. The cross-examination of the victim would continue till it is completed.
- (iii) After the cross-examination of the victim is completed, by 25th November, 2022 if the witnesses are recalled the further cross-examination of the said witnesses should be completed by fixing as many dates as the learned special court deems fit and necessary.

- (iv) In case the learned special court decides to proceed otherwise, the learned special court would once in a fortnight fix schedule of three dates and take steps for expeditiously concluding the trial.

The warrant of arrest so issued against the victim be kept in abeyance.

With the aforesaid observations, CRR 2371 of 2021 is disposed of.

Pending applications, if any, are consequently disposed of.

Pursuant to the direction of this Court, the Investigating Officer of the case is present. Her appearance before this Court is dispensed with.

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

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

(Tirthankar Ghosh, J.)