

Form J(1)

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

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

CRR 3132 of 2022

**Kutubuddin Mallick @ Kutub Mallick
Vs.
State of West Bengal and Anr.**

Mrs. Subhasree Patel
Ms. Saini Das

....for the petitioner

Item No.22

Heard & Judgment on: 31.10.2022

Bibek Chaudhuri, J.

The petitioner is the accused in connection with Chanditala Police Station Case No.61 of 2020 under Sections 363/365 of the Indian Penal Code read with Sections 4(1) and 6 (1) of the Protection of Children from Sexual Offences Act, 2012.

The aforesaid FIR case ended in filing charge sheet against the petitioner under the above mentioned penal provisions. The petitioner has prayed for quashing the aforesaid proceeding on the ground that the victim girl willingly left her paternal home and married the petitioner. They used to live as husband and wife and in their wedlock the victim girl gave birth to a child. Under such circumstances, there cannot be any charge under Sections 363/365 of the Indian Penal Code read with Sections 4(1) and 6(1) of the POCSO Act.

The learned advocate for the petitioner relies on the statement of the victim girl recorded under Section 164 of the Code of Criminal Procedure. The victim girl stated that her parents used to assault her physically and wanted to settle her marriage with some persons other than the petitioner. So she voluntarily left her paternal home. She has attained age of 18 years and her marriage was solemnized with the petitioner.

Whether the petitioner was major or not at the time of her marriage, consummation of marriage and delivery of child are questions of fact to be decided only during trial of the case. The revisional Court cannot quash a proceeding on the basis of a

statement of the victim girl under Section 164 of the Code of Criminal Procedure.

In view of the above discussion, I do not find any merit in the instant revision and accordingly the revisional application is **dismissed**. However, the petitioner is at liberty to agitate this point at the time of consideration of charge and the learned trial Judge is directed to consider as to whether there is sufficient material to frame charge on the basis of the materials on record, documents supplied under Section 207 of the Code of Criminal Procedure and other materials in the case diary.

(Bibek Chaudhuri, J.)