

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

CRR 2567 of 2021

Aman Paswan

Vs.

The State of West Bengal & Ors.

For the Petitioner : Mr. Rajeev Lochan

Heard on : 06.05.2022

Judgment on : 06.05.2022

**The Court :**

This is an application for quashing of a criminal trial under Sections 376(2)(1) (j) of the Penal Code and Section 12 of the POCSO Act.

Learned counsel appearing on behalf of the accused petitioner submits as follows. The petitioner is an accused in this case and is facing the present trial. He is custody for about 7 years. First, from the statement of the victim girl recorded under Section 164 of the Code, it does not appear that alleged offences were committed upon her. Second, from the documents available from the Howrah District

Hospital, it appears that the victim was admitted in the hospital on 30.07.2015 and discharged from there on 31.07.2015. This is in direct contradiction with the evidence of the concerned medical officer that she suffered profuse bleeding and had to remain in hospital for seven days. Particularly, it appears that a doctor tried to act as an investigating officer and in fact, recorded a statement of the accused which is inculpatory in nature. This is absolutely impermissible in law. The wrongdoings of the doctor was brought to the notice of the Hon'ble Chief Minister and an enquiry has been ordered in this regard. At present the case is at the stage of recording of defence evidence. Since it appears that no prima facie case is made out from the above referred documents, the proceeding ought to be quashed as against the present petitioner.

I have heard the submissions of the learned counsel for the petitioner and have perused the revision petition.

I have carefully looked at the statement of victim girl recorded under Section 164 of the Code. It appears that her age was recorded as 9 years. What she stated in answer to question No. (10) does make out an offence quite in keeping with the allegations leveled in the charge sheet. One has to appreciate that a 9 years old girl would be thinking in her own way. In any event, if there is any infirmity in the same, the same can best be decided before the learned trial court.

Simply because there is a divergence as regards the duration of stay of the victim girl at the hospital between a document available in the hospital vis-a-vis the version of the concerned doctor, it does not mean that the entire case would go away. Again, these are disputed questions of fact which can be decided only by the learned trial court and not in an application for quashing of a proceeding before this Court.

So far as the document purportedly created by the medical officer who examined the accused is concerned, the learned trial court would be in the best position to decide whether the same is admissible in evidence or not.

For the grounds taken up by the learned counsel for the petitioner as above referred, the evidence collected thus far cannot be washed away. Nor can this Court hold a mini trial here, especially when the case is at an advanced stage of recording of defence evidence.

In view of the above, I do not find any merit in this application.

Accordingly, the revisional application is dismissed.

However, there shall be no order as to costs.

The learned trial court is requested to conclude the trial as expeditiously as possible without granting any unnecessary adjournments to any of the parties.

Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

**(Jay Sengupta,J.)**

**tbsr**