

14.12. 2022
item No.22
n.b.
ct. no. 551

CRR 2969 of 2018

Sk. Faridul Rahaman
Vs.
The State of West Bengal & Anr.

Mr. Bivash Banerjee,
Mr. Rohit Prasad
..... For the petitioner.
Mr. Swapan Banerjee,
Ms. Purnima Ghosh
... for the State.

The instant revisional application was preferred under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 against an order dated 23.8.2018 passed by the learned Judge, Special Court under POCSO Act in Special T R 49 of 2018 arising out of Jagatballavpur P. S. Case No. 108 of 2018 dated April 20, 2018 under Sections 354A/354B of the Indian Penal Code and Sections 10/12 of the Protection of Children from Sexual Offences Act. 2012.

Learned advocate appearing on behalf of the petitioner submitted before this Court that the de facto complaint lodged a complaint against the opposite party no.2 after being informed by his minor daughter. According to the information, the police has initiated the case and started investigation. After the true fact is revealed, the present de facto complainant feels it necessary to appear before the learned Court below and stated that he has been guided by his minor daughter who is only nine years old and lodged the false complaint against the accused. He also submitted before

the learned Court below that the information is only basis upon the statement of the minor girl. So, the complaint filed by the de facto complainant may not be taken into account. Learned Court below heard the de facto complainant and passed the impugned order on August 23, 2018 whereby learned Court below is of the opinion that the offence under Section 22(1) of the POCSO Act was well established against the de facto complainant.

Learned advocate appearing on behalf of the petitioner further submitted before this Court that the impugned order of finding the de facto complainant's guilty under Section 22(1) of the POCSO Act is not at all correct. He further pointed out that the impugned order of sentence passed by the learned Court below is improper one. Actually, the de facto complainant disclosed the true fact before the learned Court below so that the accused may not be harassed. But the learned Court below without going through the contention of the de facto complainant passed the impugned order of sentence. He prayed for setting aside the impugned order.

Learned advocate appearing on behalf of the State produced the case diary. He pointed out that the investigation of the police is ended in filing of the report in final form. The victim girl was produced before the learned Magistrate and their statement was recorded under Section 164 of the Code of Criminal Procedure. The police authorities have also enquired the available witnesses. Police has already come to a conclusion that this is the false case. He further argued that the order passed by the learned Court below suffers no illegality or impropriety so it cannot be set aside.

Heard the learned advocates perused the materials on record also perused the statement recorded by the police during the course of investigation of the case. I have also perused the statement recorded by the Magistrate under Section 164 of the Code of Criminal Procedure. It appears that from the impugned order that the Learned Special Court has recorded the statement of the de facto complainant before him in the month of August but the case was registered in the month of April of the same year. So it appeared that after four months of the initiation of the case, the de facto complainant appears before the Court. It further appears that the de facto complainant gave a statement to the I.O. during course of investigation, which supported the prosecution case. What prevented de facto complainant to state the true fact before police? Why he keep himself mum for long 4 months?

Considering the entire aspect I find that the learned Court below has not committed any error in passing the impugned order. There are sufficient grounds for holding the de facto complainant to be a guilty. Considering the same I find no justification to interfere with this order.

Accordingly, the criminal revisional application is hereby dismissed as devoid on merit

All connected application, if any, is hereby dismissed.

Any order of stay passed by this Court during the proceeding of the instant revisional application is hereby vacated.

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

(Subhendu Samanta, J.)