

Form J(1)

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side

Present :**The Hon'ble Justice Bibek Chaudhuri****C.R.R. 3491 of 2022*****Tithi Chakraborty******Vs.******Sushil Chakraborty & Ors.*****For the petitioner : Mr. Rabindra Kumar Jaiswal, Adv.****Heard on : 20.12.2022****Judgment On : 20.12.2022.****Bibek Chaudhuri, J.**

The petitioner being aggrieved against an order dated 8th August, 2022 passed by the learned Chief Judicial Magistrate, South 24-Parganas at Alipore refusing to accept the FRT and taking cognizance of offence under Sections 506/114 of the Indian Penal Code against the accused persons has filed the instant revision alleging, *inter alia*, that the petitioner/de facto complainant in unequivocal and clear term stated in the petition of complaint that one of the accused persons namely Sushil Chakraborty committed an offence under Section 354 of the Indian Penal Code. But the learned Magistrate refused to take cognizance of offence under Section 354 of the Indian Penal Code against the said Sushil Chakraborty.

It is submitted on behalf of the petitioner that the petitioner in her statement under Section 164 of the Code of Criminal Procedure did not state anything against the accused person alleging commission of offence of outraging modesty of the petitioner. However, discrepancy between the FIR and in subsequent statement under Section 164 of the Code of Criminal Procedure may be a defence. The discrepancy cannot be a ground for outrage without initiation of trial. In support of his contention, learned Advocate for the petitioner refers to a unreported decision of the Hon'ble Supreme Court in the case of ***Hazrat Deen Vs. The State of Uttar Pradesh & Anr.*** (Special Leave to Appeal (Crl.) No.9552 of 2021 decided on 6th January, 2022).

I have heard the learned Advocate for the petitioner.

I have perused the judgment of the Hon'ble Supreme Court cited by the learned Advocate for the petitioner. At the outset it is recorded that the learned Magistrate wrongly placed reliance on the above-mentioned judgment because ratio with regard to the discrepancy between the FIR and in subsequent statement under Section 164 of the Code of Criminal Procedure was laid down by the Hon'ble Supreme Court on the factual background that in the FIR, the de-facto complainant did not make any allegation of commission of offence under Section 376 of the Indian Penal Code. However, in her statement recorded under Section 164 of the Code of Criminal Procedure, she

elaborately stated about the commission of offence under Section 376 of the Indian Penal Code.

The Hon'ble Supreme Court accepted the statement of the victim girl recorded under Section 164 of the Code of Criminal Procedure over the FIR. In the instant case the petitioner made an allegation of commission of offence under Section 354 of the Indian Penal Code in the FIR but in her statement recorded under Section 164 of the Code of Criminal Procedure she did not utter a single word about outrage of her modesty.

On perusal of the impugned order dated 8th August, 2022, I do not find any illegality or material irregularity. Therefore, there is no reason for interference.

The instant revision is accordingly summarily dismissed.

(Bibek Chaudhuri, J.)

**Mithun De/
A.R. (Ct).
SI No.28.**