

10.05. 2022
item No.3
n.b.
ct. no. 34

CRR 2894 of 2017
+
IA No. CRAN 2 of 2018(Old No. CRAN 774 of 2018)

Jodip Palit
Vs.
State of West Bengal & Anr.

Mr. Sandipan Ganguly, Sr. Adv.
Mr. Somopriyo Chowdhury,
Mr. Pratim Dasgupta
.....for the Petitioner

Mrs. Anasuya Sinha,
Mr. Pinak Kumar Mitra
.....for the State

The present revisional application has been preferred for quashing of the proceedings being Misc. Case No.03/17 which is pending before the Learned Judge, Special Court (POCSO Act), 2012, Barasat under Section 344 of the Code of Criminal Procedure and all orders passed therein including order dated 25.07.2017.

The purpose for which the Learned Court while delivering the judgment of acquittal under Section 8 of the POCSO Act decided to initiate proceedings under Section 344 of the Code of Criminal Procedure against the present petitioner was in respect of the deposition of the petitioner as he had been the complainant of the case.

Records reflect that the petitioner was a Safety & Security Manager of Hotel Hyatt Regency, Kolkata and he has signed the letter of complaint which was treated to be the First Information Report of the case. According to the Learned Judge the Letter of

Complaint included an enclosure which was the statement made by the victim and the said letter was not brought in evidence along with the complaint. The other issue which weighed with the Learned Judge also is that there was change in narration so far as the witness is concerned and also portion of the evidence which reflected regarding the sexual assault of offence under the provision of the POCSO Act have been omitted by the accused. The Learned Judge heavily relied on the evidence of this particular witness and was of the opinion that because of this particular change of narration in Court, the accused had to be acquitted.

I have perused the evidence of the present petitioner who was examined as P.W. 2, in S.T. 04(01) 17 Spl., the said evidence is set out as follows:

"I am Safety and Security Manger of Hyatt Hotel. On 26.11.2015 I was posted at same place. On that date I made a written complaint before IC Bidhannager South PS. The complaint was drafted and typed by General Manager, Britta Leick Milde. I put my signature. This is may signature.(Signature is marked Exbt. 3/1). I put my signature after it was read over and explained to me. (The complaint is marked exbt.3) I made complaint against Leslee Powell. He is present in the court room

I saw Leslee Powell moving with a boy/. Being suspicious regarding human trafficking. I enquired the boy. The boy told me that Leslee was his friend. He told me that he was feeling awkward of his room. The boy told me that Mr. Powell required the boy to visit his bath room. Police interrogated me. I submitted CCTV footage with a forwarding letter. This is that forwarding letter dt. 04.12.2015(marked exbt.4)."

So far as the enclosure to the complaint is concerned, it was for the prosecution to bring the same on record as the

complaint which contains the annexure was in custody of the Investigating Agency/prosecuting agency. The Learned Public Prosecutor conducting the case should have been vigilant while marking Exhibit – 3 when it was brought in evidence. So far as the other allegation is concerned which related to the sexual offence under the POCSO Act the same was in the contents of the complaint of the annexure of complaint and was a narration of the victim himself. Therefore, the same could have been verified from the victim and the issue regarding the contents having been marked already as an Exhibit the probative value of the same was already in evidence and there was no scope for the witness to resile from his earlier statement. The witness was a formal witness, I do not find anything in examination in chief or the cross-examination of this particular witness which did not add to the prosecution version. Neither there is anything in the evidence, which demolishes the case of the prosecution nor the petitioner is an expert in the day to day Court proceedings. The answers, which have been elicited, were pursuant to questions, which were either put to him or confronted to him. Accordingly the answers were given by the concerned witness.

The deposition in any manner do not reveal that there was any intention of this particular witness to deviate from his earlier version or to deny any substantive evidence for the sake of diluting the prosecution case. None of the evidence would come within the meaning of false evidence or false information deposed before a Court of law. Further no offence of perjury is reflected from the evidence of this witness. The only issue regarding the non-supply

of the enclosure was absolutely due to the prosecution particularly the Investigating Officer or the Public Prosecutor conducting the case. The present petitioner cannot be foisted with a prosecution for false evidence before any Court of Law.

Having regard to the observation made above, I am of the opinion that there are no cogent materials available for prosecuting the present petitioner under the provision of Section 344 of the Code of Criminal Procedure. Similar view has also been taken by a Co-ordinate Bench of this Court in the matter of Maharani Santra reported in 2013 (3)CHN(Cal) 681.

The further continuance of the proceedings so far as the present petitioner is concerned would be an abuse of the process of the Court and as such further continuance of the same is unwarranted.

Thus Misc. Case No.3/17 pending before the Learned Judge, Special Court (POCSO Act), 2012, Barasat under Section 344 of the Code of Criminal Procedure is hereby quashed.

Accordingly, CRR 2894 of 2017 is allowed.

All pending connected applications, if any, are consequently disposed of.

Interim order, if any, is made absolute.

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

(Tirthankar Ghosh, J.)