

20.04. 2022
item No.20
n.b.
ct. no. 34

CRR 3176 of 2019

Smt. Baishali Dutta
Vs.
State of West Bengal & Ors.

Md. Shahjahan Hossain,
Ms. Sanjida Sultana,
Mr. Prithwiraj Biswas
.....for the opposite party no.2

Mr. Imran Ali,
Ms. Debjani Sahu
.....for the State

The present revisional application has been preferred challenging the Judgment and Order dated September 5, 2019 passed by the Learned Chief Judge, City Sessions Court at Calcutta in connection with criminal revision no.156 of 2019, wherein the Learned revisional Court was pleased to set aside the order dated 28.5.2019 passed by the Learned Metropolitan Magistrate, 12th Court Calcutta in connection with the G.R No.127 of 2017 arising out of Bowbazar Police Station case no.37 of 2017 dated 3.2.2017.

Records of the revisional application reflects that on the basis of complaint addressed to the Officer in Charge Bowbazar Police Station by one Smt. Baishali Dutta wife of Mr. Pulak Dutta, Bowbazar Police Station No.37 of 2017 dated February 3, 2017 was registered for investigation under Sections 504/506(ii)/509/34 of the Indian Penal Code. The police authorities on conclusion of investigation submitted charge sheet dated 21.9.2017 before the

Learned ACMM, Calcutta. It is relevant to state that although the complainant could not name any person and the formal FIR had to be registered against unknown accused persons using Mobile SIM nos.7605817252 and 7449697154, the charge sheet was submitted against one Shri Probhas Ghosh and Smt. Priyanka Das (Opposite Parties nos. 2 and 3 herein). On such charge sheet being filed against the accused persons and copies under section 207 of the Code of Criminal Procedure being served, an application under Section 239 of the Code of Criminal procedure was preferred at the instance of the accused persons. The learned Magistrate after consideration of the statement under Section 161 of the Code of Criminal Procedure and under Section 164 of the Code of Criminal Procedure along with relevant documents was pleased to hold that a case has been made out under the provisions of Sections 504/506/509 of the Indian Penal Code read with Section 34 of the Indian Penal Code and with such observations the Metropolitan Magistrate was pleased to reject the prayer for discharge.

The opposite party nos. 2 and 3 being aggrieved preferred a revisional application before the Learned Chief Judge, City Sessions Court at Calcutta against the said order dated 28.5.2019. Similar arguments were advanced before the Learned Chief Judge, City Sessions Court at Calcutta and the Learned Chief Judge, City Sessions Court at Calcutta after considering the materials appearing in the Case Diary as well as records, based his findings independently of the order passed by the Learned Magistrate. The Learned Chief Judge categorically observed that the Police Authorities in the charge sheet has relied upon three witnesses and

the Investigating officer of the case. So far as the documents are concerned, some photographs have been relied upon. Learned Chief Judge on a perusal of the materials appearing in the case records, was of the opinion that the two vital witnesses of the case happens to be Saumitra Biswas and one Arpan Dutta. According to him Saumitra Biswas was running a Telecommunicatin Shop and selling SIM Cards of different service providers and he sold the SIM Card bearing connection No.7605817252 to one Prabhsh Ghosh that is one of the accused persons but the application form reflected that the SIM Card was in the name of one Abhijit Bhattacharya. So far the other witness is concerned namely, Arpan Dutta, he stated that he had affair with the accused Priyanka Das. The accused namely, Prabhas Ghosh being a colleague, on request gave his SIM Card to Priyanka Das, the other accused. Apart from such oral assertions nothing is appearing on the records. So far as the call recording details are concerned, although they were collected as has been submitted on behalf of the State, such huge number of papers as are appearing in the Case Diary but no documents are there as to how the same was officially obtained from the service providers.

Astonishingly, such documents have not been also relied upon by the prosecution to establish its case before the Learned Trial Court. The foundation of the complaint is based on the fact that the complainant received phone calls which have been from unknown persons from the numbers stated therein, by whom she was insulted and abused in filthy language. No chain of circumstances appears so far as the said mobile numbers are

concerned with the persons who have been made accused and no documents have been relied upon by the prosecution regarding the authenticity of the call detail records. The manner in which the petitioners have been implicated as an accused by way of oral testimonies of witnesses do not appear to be convincing materials for causing interference in the order dated September 5, 2019 passed by the Learned Chief Judge, City Sessions Court at Calcutta in criminal revision No.156 of 2019 dated 5.9.2019 and thus the said order hereby affirmed.

Accordingly, the revisional application being CRR 3176 of 2019 is dismissed.

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

Interim order, if any, is hereby vacated.

However, the complainant would be at liberty to adduce her own evidence before a Court of law if any case is filed with similar allegations under Section 200 of the Code of Criminal Procedure.

The Case Diary be returned to the Learned Advocate appearing for the State.

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

(Tirthankar Ghosh, J.)