

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ajoy Kumar Mukherjee

C.R.R. 3307 of 2019

Sudip Mondal & Ors.

-vs-

The State of West Bengal & anr.

For the Petitioners : Mr. Swapan Mallick
Mr. Arup Kundu

For the State : Mr. Binay Panda
Ms. Puspita Saha

Heard on : 04.08.2022

Judgment on : 10.08.2022

Ajoy Kumar Mukherjee, J.

1. Present applications under section 482 of the Code of Criminal Procedure has been preferred against order dated 01.10.2019 passed by Judge, Special Court, Bankura in special case No. 06 of 2019, Special Session Trial No. 01(10) 19 arising out of GR Case no. 156 of 2019 in connection with Onda Police Station Case No. 119/19 dated 04.06.2019 under Section 376(2)/342/365/417/34 of the Indian Penal Code, read with Section 6/17 of the Protection of Children From Sexual Offences Act, 2012 (hereinafter called as POCSO).

2. Opposite party no. 2 lodged written complain on 04.06.2019 before the Officer-in-charge, Onda Police Station, Bankura alleging *inter alia* that the accused No. 2 Sudip Mondal accompanied victim, pretending as love affair before canal Par and involved physical relationship with her, without her consent and confined her and in the midnight the accused no. 1 handed over the victim girl to her relatives. On 09.03.2019, in presence of relatives, the marriage was solemnized in between the accused No. 1 and the complainant /opposite party no. 2. After 7 days of marriage it is alleged that the accused no. 1 had left the place and the father, mother and sister of the accused No. 1 started to inflict torture and assaulted her and furthermore accused no. 2,3,4 tried to kill her by pouring kerosene oil and out of fear she left her in-laws' house and took shelter at her maternal uncle's house. On the basis of written complaint the present proceeding was initiated against six accused persons including the petitioner

3. Mr. Swapan Mallick on behalf of the petitioners submits that during investigation, statement of witnesses were recorded and the victim/complainant /opposite party was not willing for further medical examination and as such nothing was collected for FSL examination. Mr. Mallick further submits that statement of victim girl was recorded under section 164 of the code. If the statement of the victim recorded under section 161 along with the statement of the victim made before the doctor while she was examined on 05.06.2019 and also with statement of the victim recorded under section 164 of the code on 21.06.2019, are read together it would be

crystal clear that those are self-contradictory and having regard to facts and circumstances of the case, the learned Judge ought to have disbelieved the prosecution case and ought not to have framed charge against the petitioners mechanically without applying judicial mind.

4. Mr. Mallick further submits that according to FIR physical relationship between petitioner No. 1 and the complainant took place on 08.03.2019 and on 09.03.2019 their marriage was solemnized and having aforesaid facts and circumstances of the case there cannot be any offence as alleged either under section 376 (2) of the Indian Penal Code or under POCSO Act. Learned special Judge ought to have applied his judicial mind and ought not to have acted as post office by putting rubber stamp over the charge-sheet and should not have framed the charges. Moreover it is admitted that after marriage defacto complainant /opposite party No. 2 stayed at the house of the petitioners only for 7 days and thereafter husband/petitioner no. 1 left the state to join his job and in respect of allegation of torture against other in-laws, it appears no such allegation was made earlier by the alleged victim anywhere which leads to conclude that the allegations are concocted, fabricated and manufactured and has been cooked up only to make out a case in her favour.

5. Mr. Mallick further submitted that present proceeding has been initiated for some oblique purpose and with an ulterior motive to harass and humiliate the petitioner and to lower down the dignity of the petitioners in the society. No explanation has been offered for delay in lodging FIR. Medical examination also goes to show that no mark of injury was found on her body and she

refused to examine herself for other tests and as such the statement of opposite party no. 2 does not find any corroboration with the medical report.

6. He further submits that the allegations made in the complaint do not constitute the ingredients of alleged offence and prosecution failed to establish in the absence of seizure of article or injury report, that petitioners have committed any offence. Even if the allegations made in the complaint be taken in their face value it does not make out any case against the accused persons.

7. Mrs. Pushpita Saha on behalf of the state submits that sufficient incriminating materials collected against all the petitioners during investigation and as such after completion of investigation police submitted charge-sheet against all the accused persons and during framing of charge the accused persons have not raised any objection and as such the evidence of some of the witness have already been completed and trial is in the midway and as such it would not be appropriate at all to quash the trial at this stage, invoking power under section 482 of the Code of Criminal Procedure.

8. Considered the submissions made by both the parties.

9. I have carefully gone through the written complain as well as statements recorded under section 161 Cr.P.C. the statement of the victim recorded under section 164 of the Cr.P.C., the medical examination report of victim and the birth certificate of the victim, where from it is clear that the allegations levelled against the petitioner No., 1 clearly discloses offence. Furthermore the statement of the complaint along with other materials on record also discloses offence against the other petitioners.

10. Needles to mention that even if there was any marriage in between petitioner No. 1 and victim after the alleged occurrence that does not wipe out the offence committed by the petitioner No. 1, which took place prior to alleged marriage.

11. From the reading of the FIR , it cannot be held that even if the allegations are taken as proved no case is made out. There are specific allegations against petitioner No. 1 for committing forceful sexual intercourse against minor and that allegation against other petitioners is about harassing the complainant and that attempt was also made them to kill her which forced her to leave the petitioner's house. The question whether the opposite party No. 2/ complainant has been assaulted and/or an attempt was made to kill her, is a matter of trial but at this stage, it cannot be said that no case is made out.

12. Even if for the sake of argument, if it is presumed there exists any discrepancy in the statements made by the victim as alleged by learned advocate for the petitioner, High Court has no jurisdiction to appreciate the evidence in the proceedings under section 482 of the code. Whether there are contradictions and/or inconsistencies in the statement of victim and other witnesses is essentially an issue relating to appreciation of evidence and the same can be gone into by the Trial Court.

13. It is well settled that at the stage when the High Court considers a petition for quashing criminal proceedings under section 482 of the Cr.P.C., the allegations in the FIR must be read as they stand and it is only if on the face of the allegations that no offence, as alleged, has been made out, that the

court, may be justified, in exercising it's jurisdiction to quash, but if a prima facie case is made out disclosing the ingredients of the offence alleged against the accused, the court cannot quash order of framing charge or criminal proceeding.

14. In view of above and also in view of materials collected during investigation and contents of the complain, I do not find that this is a fit case where proceeding is liable to be quashed invoking power under section 482 of the Code.

15. CRR 3307 of 2019 stands dismissed.

However, there will be no order as to costs.

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

(AJOY KUMAR MUKHERJEE, J.)