

14.02. 2022
item No.57
n.b.
ct. no. 34

(via video conference)
CRR 1597 of 2020

Smt. Ganga Singh Parsi @ Ganga Parsi Singh
Vs.
Ashok Dutta & Ors.

Mr. Satrajit Sinha Roy,
Mr. Tapan Roy
.....for the Petitioner

Mr. Saibal Bapuli,
Mr. Arijit Ganguly,
Mr. Sanjib Dr. Dan
....For the State

Mr. Ujjal Roy
... for the o.p. no.1.

At the outset learned advocate appearing for the petitioner has produced the certified copy of the order dated 11.9.2019. Let the same be kept with the record.

The said order reflects disturbing observations being made by the learned Additional Sessions Judge 1st Court at Sealdah being a Special Court under the POCSO Act. The learned Court while disposing of the bail application of Lakai @ Loknath Ghosh observed that there are no materials which are found related to the provision of POCSO Act and as such sent the records to the learned Judicial Magistrate 4th Court for further course of action. I am of the opinion that the learned Court should have appreciated the contents of the statement of the victim under Section 164 of Criminal Procedure Code which is as follows:

“On 24.8.2019 at about 10.30 P.M. when I along with my mother was returning from the house of our advocate Mr. Tapan Pal Roy at that time my uncle named Khokan Ghosh and his two sons namely Pokai Ghosh, Lokai Ghosh touched my breast and torn my wearing apparel at the backside of Chitpure South Cabin. When my mother tried to restrained them, they became furious and assaulted my mother. Due to such assault my mother sustained injury on her left hand.”

The contents of the said statement under Section 164 Criminal Procedure Code squarely falls within the definition of sexual assault as incorporated in Section 7 of the POCSO Act, 2012. Consequently, Section 8 of the POCSO Act which prescribes for punishment was incorporated in the FIR, there was nothing wrong in the investigation. However, observation of the learned Special Court had far reaching consequences, as such when the charge-sheet was submitted on November 8, 2019, the police authorities at the time of submission of charge-sheet deleted the provisions of POCSO and submitted charge-sheet before the Magisterial Court under Sections 323,324,354 of Indian Penal Code.

This Court is of the opinion that the order so passed by the Learned Special Court on 11.9.2019 is contrary to the provisions of the POCSO Act and as such by invoking inherent powers of this Court under Section 482 of the Code of Criminal Procedure, the case records are directed to be placed before the POCSO Court exercising jurisdiction presently.

Report submitted by the learned advocate for the State is kept with record.

Needless to state that this Court has not gone into the issue of bail being granted. As such the bail of the concerned accused would continue.

Learned Registrar(Judicial Service), High Court, Calcutta is directed to communicate to all the Special Courts to restrain itself from the issue of maintainability of the POCSO Act while considering any bail or considering any application at the stage of investigation. The present case is one example where because of comments being made by the concerned POCSO Court in the order while passing bail, the investigating authorities seems to have been influenced and omitted provisions of the POCSO Act.

With the aforesaid observations the part of the order dated 11.9.2019 wherein the Special Court was pleased to remit the record to the learned Judicial Magistrate 4TH Court Sealdah by holding that no materials have been found relating to the provisions of POCSO Act are hereby set aside.

Consequently, the revisional application being CRR 1597 of 2020 is allowed to the limited extent referred to above.

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

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

(Tirthankar Ghosh, J.)