

08.09.2022

Item No.27

Ct.No.2

dc.

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CRIMINAL REVISIONAL JURISDICTION**

C.R.R. 144 of 2022

**Amit Kanoria
versus
The State of West Bengal & Ors.**

In Re: An Application under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, 1973.

Mr. Rajdeep Mazumder,
Mr. Abhrojyoti Das,
Mr. Pritam Roy,
Mr. Moyukh Mukherjee,
Ms. Aishwarya Bazaz,
Mr. Amit Saha ... For the Petitioner.

Mr. Aditi Shankar Chakraborty,
Mr. Nilay Chakraborty ... For the State.

Mr. Sabyasachi Banerjee,
Mr. Sourav Ganguly,
Ms. Minal Palana ... For the Opposite Party No.3.

The subject-matter of this revisional application relates to an order dated 02.05.2022 passed by learned Additional District and Sessions Judge, 1st Court (Special Court), Siliguri in connection with Special POCSO Case No. 17(3) of 2022 arising out of Pradhannagar Police Station Case No. 214 of 2022 dated 22.03.2022 under Section 6 of the POCSO Act wherein the learned Special Court was pleased to refuse the prayer for addition of Sections against the accused/opposite party no.3.

I have considered the order dated 02.05.2022 wherein it reflects that the Investigating Officer of the case advanced a prayer for addition of Sections 188 of the Indian Penal Code,

Section 16 of the POCSO Act and Sections 25/77 of the Juvenile Justice Act against the accused/opposite party no.3.

Mr. Mazumder, learned advocate appearing for the petitioner submits that the learned Special Court analysed the application on perusal of the materials available and made a specific observation that rest of the Sections are not applicable and only Section 77 of the Juvenile Justice Act should be added in respect of the accused. Attention of the Court has also been drawn to the observation of the learned Special Court that “Prayer for other Sections of law as stated above is refused at this stage. However, liberty is given to the prosecution to apply afresh if further materials come against the accused.”

Mr. Banerjee, learned advocate appearing for the opposite party no.3 submits that the petitioner has no issue for being aggrieved with the order passed by the learned Special Court in view of the fact that it is for the State/Public Prosecutor to take a call as to whether the investigating agency is aggrieved in respect of refusal with regard to the rest of the Sections as observed by the learned Special Court. Additionally, he submits that there has been unnecessary interference of the Investigating Officer at the behest of the *de facto* complainant which is with an ulterior motive of stifling liberty of the accused/opposite party no.3. Learned advocate has also drawn the attention of the Court to the Division Bench order of this Court wherein the prayer for bail of the opposite party no.3 was allowed with a specific observation

that “*prima facie*, we do not find that the ingredients of the Protection of Children from Sexual Offences Act are attracted against the petitioner.”

Mr. Mazumder, learned advocate for the petitioner has also relied upon an unreported judgement of this Court dated 29.02.2016 passed in **Criminal Revision No. 4036 of 2015 (Sayantan Chatterjee Vs. The State of West Bengal and another)** wherein it has been held in paragraph 11 as follows :

“11. It is brought to the notice of this Court by learned counsel for the opposite party no.2 that learned Magistrates usually grant permission to the Investigating Officers to add any penal section during investigation of the criminal case, though it is decided by this Court that it is the duty of the Investigating Officer to inform learned Magistrate of the subsequent development of investigation to justify the action of proceeding against any person for higher penal section during investigation of the case. Accordingly, learned Registrar General is requested to circulate copy of this judgment to all courts of learned Chief Judicial Magistrates, learned Additional Chief Judicial Magistrates and learned Judicial Magistrates of West Bengal and Andaman and Nicobar Islands for favour of information and guidance.”

I have considered the submissions of both the parties as also that of the State and I am of the opinion that the application of the Investigating Officer before the learned Special Court at the investigation stage itself is misconceived. In course of investigation, it is the duty of the Investigating Officer to inform the court for applicability or addition of Sections which are not to be adjudicated at the investigation stage. The opinion expressed by the learned Special Court as

such also was unwarranted. It was the duty of the learned Special Court not to analyse regarding the applicability of Sections either with respect to the POCSO Act or with respect to the Indian Penal Code and direct the Investigating Officer to amend the prayer as advanced before the court. The acceptance of the petition for addition of Sections which was prayed for by the Investigating Officer itself is bad in law. Consequently, the observations/analysis with respect to the applicability of the Sections as observed by the learned Special Court is also illegal.

Mr. Banerjee, learned advocate for the opposite party no.3 intends to use an affidavit denying the allegations made in this revisional application.

Having regard to the conspectus of the present revisional application, the same was not allowed as factual denial was not necessitated in the background of the present lis to be decided. The issue is absolutely on the question of law whether the court can direct an Investigating Officer either to add or delete a Section when an investigational process is in progress. This is an absolute settled proposition of law. The police authorities are absolute in their discretion in respect of addition of the Sections. The court can make scrutiny of the same while deciding any other application like the bail, anticipatory bail, return of seized goods, but the court at that stage before consideration of charges will not or should not express its opinion regarding the applicability of the Section by the investigating agency.

Needless to state that this Court has not gone into the merits of the case, but has restricted to the manner in which in the order dated 02.05.2022 the learned Special Court has accepted an application by the Investigating Officer regarding addition of the Sections and disposed of the same.

Accordingly, the order dated 02.05.2022 passed by the learned Special Court to the extent that the application made by the Investigating Officer and the rejection and confirmation/deletion of Sections in respect of the POCSO Act and Juvenile Justice Act is hereby set aside.

With the aforesaid observations, the revisional application being CRR 144 of 2022 is partly allowed.

Interim order, if any, is hereby vacated.

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

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

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)