

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 219 of 2019

With

CRAN 1 of 2019

(Old No.: CRAN 335/2019)

Asiya Bibi & Anr.

Vs.

The State of West Bengal.

For the Petitioners : Mr. Dipanjan Chatterjee,
Mr. Snehansu Majumder,
Ms. Richa Pramanik.

For the State : Mr. P.K. Dutta,
Mr. Santanu Deb Roy,
Mr. Md. Kutubuddin.

Hearing concluded on : 03.08.2023

Judgment on : 30.08.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against an order dated May 28, 2018 passed by the Learned Additional Sessions Judge, Tehatta, Nadia, in Sessions Case no. 12(9) of 2016 and the pending proceedings under Sections 363/366/120-B/34 of the Indian Penal Code, 1860 against the petitioners, having arisen out of Tehatta Police Station no. 680 of 2012, dated September 21, 2012, rejecting the petitioner and prayer for discharge.
2. The petitioner no. 1 has expired. Supplementary affidavit has been filed along with death certificate to that effect. The petitioner no. 2, now being the sole petitioner in the revision, will be now referred as 'the petitioner'.
3. The petitioner's case is that the present case has been initiated on the basis of an information lodged with the Tehatta Police Station, by one Sri Narayan Chandra Biswas, son of Late Nagendra Nath Biswas. The said information was registered as Tehatta Police Station Case No. 680 of 2012, dated September 21, 2012, for investigation into alleged commission of offences punishable under Sections 363/366/120-B/34 of the Indian Penal Code, 1860.
4. The allegations brought by way of the First Information Report are inter alia to the effect that:-

*The de facto complainant is an ex-army personal. On
September 19, 2012, at around 8.00 AM in the morning,*

the daughter of the de facto complainant left her residence along with her friends to attend private tuitions at the house of one Asit Basu. Within a very short span of time, she left the house of Asit Basu too, on the pretext that she was having pain in her abdomen. Thereafter, did not return home. The de facto complainant made all possible endeavours to find his daughter, but could not trace her out, for which he lodged a Missing Diary with the Tehatta Police Station, being Tehatta Police Station General Diary Entry No. 1014 of 2012, dated September 19, 2012. Subsequently, the de facto complainant learnt that his daughter, had developed a love relationship with one Mainul Hasan @ Rahit @ Tapi @ Idia Sk. and the said Mainul Hasan @ Rahit @ Tapi @ Idia Sk., along with one Lalchand Sk. and a few others have taken her away with ill motive. On being contacted, Mainul Hasan @ Rahit @ Tapi @ Idia Sk. denied having taken away the minor daughter of the de facto complainant, but his answers to the queries were not satisfactory. In the meantime, the de facto complainant came to know that his daughter, had recently received a few calls from 3 (three) distinct mobile numbers, and the de facto complainant firmly believes that

the user of the 3 (three) mobile numbers are the kidnappers of his daughter.

5. On conclusion of the investigation of the present case, the police have filed Charge Sheet before the Learned Additional Chief Judicial Magistrate, Tehatta, Nadia, vide. Charge Sheet no. 629 of 2012, dated November 30, 2012, alleging commission of offences punishable under Sections 363/366/120-B/34 of the Indian Penal Code, 1860 against the petitioners herein and also against one Repon Sk. @ Kamu.
6. During the course of proceedings on February 28, 2017, the petitioners filed an application under Section 227 of the Code of Criminal Procedure, 1973, before the Learned Additional Sessions Judge, Tehatta, Nadia, praying for their discharge from the case, on the ground of lack of any admissible materials on record against them.
7. By the order under revision dated May 28, 2018, the Learned Additional Sessions Judge, Tehatta, Nadia has been pleased to dismiss the application.
8. **Mr. Dipanjan Chatterjee, learned counsel for the petitioners** has submitted that the impugned order of rejection of the petitioners prayer for their discharge from the present case, is neither tenable in facts nor on law.
9. The alleged victim girl, in her statement recorded under Section 161 of the Code of Criminal Procedure, 1973 and also in her statement recorded

under Section 164 of the Code of Criminal Procedure, 1973 has stated nothing against the petitioner.

10. That the impugned order is totally inconsistent with the materials and record in the present case, and is liable to be set aside and the proceeding quashed against the present petitioner.
11. **Mr. Prasun Kumar Dutta, learned counsel for the State** has placed the Case Diary.
12. **On hearing both sides and considering the materials on record including the case diary, the following facts are before this court:-**
 - a) The date of birth of the victim is 14.03.1997.
 - b) The Complaint in this case is dated 21.09.2012.
 - c) **The alleged victim was aged 15 years at the time of incident.**
 - d) **From the documents in the case diary it appears that the marriage of the victim (then a minor) and principal accused Ripon Sk. was registered on 23.09.2012, by conversion of the victim into Muslim faith by an affidavit dated 21.09.2012 falsely stating her age as 19 years on affidavit.**
 - e) **The marriage certificate shows the victim's name as Fatema Khatun, Daughter of Narayan Chandra Biswas (the complainant in this case).**
 - f) **Medical Examination Report at page 96 of the Case Diary shows that the victim resided with Ripon Sk. (Principal Accused) from**

19.09.2012 to 02.11.2012 (almost 2 months) and had sexual intercourse several times.

13. Thus the sum of the case is:-

1. A minor girl of a different religion was kidnapped from her lawful guardian (Section 363 IPC).
2. Compelling her Marriage and registered under Muslim Law, (Section 366 IPC).
3. **Principal accused subjected the victim to sexual intercourse (Section 376 IPC).**
4. During the said period, the principal accused along **with the aid** of the other accused persons including the petitioner allegedly did all the unlawful acts (kidnapping, false affidavits, registration of marriage etc.) as stated.

14. The crime herein is serious and there is prima facie materials on record against the petitioner Kabai Sk. to face trial and interference at this stage will be an abuse of the process of law/court and also against the interest of justice.

15. CRR 219 of 2019 is dismissed.

16. The trial court shall consider the materials on record in respect of the offence under Section 376 IPC against the principal accused and then proceed in this case expeditiously in accordance with law.

17. All connected applications, if any, stands disposed of.

18. Interim order, if any, stands vacated.
19. Copy of this judgment be sent to the learned Trial Court for necessary compliance.
20. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)