

04.05.2023

Item No.34
Ct.No.34
dc.

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

C.R.R. 1048 of 2021

**Shib Sankar Haldar & Ors.
versus
The State of West Bengal & Anr.**

In Re: An Application under Section 482 of the Code of Criminal Procedure, 1973.

Mr. Bikash Ranjan Bhattacharya,
Mr. Uday Sankar Chattopadhyay,
Ms. Snigdha Saha,
Ms. Trisha Rakshit,
Ms. Rajashree Tah ... For the Petitioners.

Md. Anwar Hossain,
Ms. Sreyashee Biswas ... For the State.

Mr. Arkaprabho Roy ... For the Opposite Party No.2.

The petitioners have challenged the proceedings in connection with Sarenga Police Station Case No. 42 of 2018 dated 20.12.2018 wherein the investigating agency after completion of investigation submitted charge-sheet under Sections 341/323/34 of the Indian Penal Code.

Mr. Bhattacharya, learned senior advocate appearing for the petitioners submits that there is inherent improbability in the facts narrated in the prosecution case. Learned senior advocate has taken the Court through the proceedings before the learned Executive Magistrate as well as the list of witnesses which are appended along with the charge-sheet. It has further been submitted before this Court that considering the age of the victim, the facts which have been laid down including the medical documents which do not itself speak of any injury except pain, the continuation of the present proceedings should not be allowed to continue.

Learned advocate for the private opposite party no.2 is present and opposes such contentions so advanced by the learned senior advocate for the petitioners.

Mr. Hossain, learned advocate appears for the State and produces the case diary.

I find that in the present case the investigation commenced under Sections 341/325/188/34 of the Indian Penal Code and the investigating agency on an assessment of the materials so collected in course of the investigation submitted charge-sheet under Sections 341/323/34 of the Indian Penal Code and dropped the charges under Section 188 of the Indian Penal Code and modified Section 325 of the Indian Penal Code to Section 323 of the Indian Penal Code in the background of the Sections for which the investigating agency has charged the present petitioners and the same was after considering the statements recorded under Section 161 of the Code of Criminal Procedure and the documents of the primary health centre.

On an assessment of the materials so produced before this Court, I am of the opinion that whether an untoward incident happened or not – the issue relating to its truth or falsity cannot be entertained by this Court at this stage. At least the witnesses have stated that some incident had taken place including the allegations of assault. Whether such assault resulted in injury or not or whether at all the assault took place are question of facts to be considered by the learned trial court. Accordingly, no interference is made by

this Court at this stage. The petitioners would be at liberty to canvass such points at the appropriate stage of the trial.

Mr. Bhattacharya, learned senior advocate for the petitioners submits that the petitioner no.1 is aged about 71 years. In case, on behalf of the petitioner no.1, an application under Section 205/317 of the Code of Criminal Procedure is applied through a learned advocate with an undertaking that he would represent the petitioner no.1 along with all the relevant conditions required under the aforesaid Sections, the learned trial court would allow such prayer and will not insist on the physical appearance of the petitioner no.1 in the regular proceedings of the court until and unless the trial cannot proceed without the physical appearance of the petitioner no.1.

With the aforesaid observations, the revisional application being CRR 1048 of 2021 is disposed of.

Pending connected application, if any, is 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.)