

66 16.08.
2023
Ct
237
rup

CRA (SB) 120 of 2023

**Selim Sk.
Vs.
The State of West Bengal & Anr.**

Mr. Niladri Sekhar Ghosh,
Mr. Tapodip Gupta
Ms Sompurna Chatterjee,
Mr. Sourov Mondal ... for the appellant.

Mr. Bidyut Kr. Roy,
Mrs. Rita Dutta. ... for the State.

This is an appeal assailing the order of conviction dated 02.06.2023 passed by learned Judge, Special Court (POCSO Act), Berhampore, Murshidabad in connection with C. Special Case No – 30/2022, whereby learned Special Court passed an order directing complainant to suffer simple imprisonment for three months and to pay a fine of Rs.10,000/- to be paid in the accounts of DLSA, Murshidabad, in default to suffer further simple imprisonment for seven days.

By the order impugned, learned Judge held that de-facto complainant adduced false evidence before the Court victimizing the minor children which is punishable under Section 22(3) of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the “POCSO Act”). Learned Judge relied on evidence of complainant himself and returned his finding that false

evidence was adduced by the complainant. It was further held by the learned Judge that false complaint was filed which exposed three minor children including his minor daughter in connection with an offence under the POCSO Act.

Learned advocate appearing on behalf of the appellant has submitted that order impugned is premature as other witnesses are to be examined in this case.

Tone and tenor of the order impugned is that learned Judge disposed of the issue of giving false evidence by a summary proceeding under Section 344 of the Code of Criminal Procedure.

From the record, it appears that learned Judge only examined two witnesses i.e. complainant as PW-1 and the scribe of written FIR as PW-2 and written complaint was admitted in evidence as Exhibit-1/1.

By the order impugned learned Judge convicted the complainant for giving false evidence and also fixed the date for further evidence and production of accused.

Under Section 340 of the Code of Civil Procedure, learned Judge chose to take cognizance of the matter of his own and disposed of the issue by summary procedure prescribed under Section 344 of the Code of Criminal Procedure.

On bare reading of Section 344 of the Code of Criminal Procedure, it appears that such an opinion for

giving false evidence can be formed only at the time of delivery of judgment or final order disposing any judicial proceeding. Therefore, it is sine qua non for proceeding under Section 344 of the Code of Criminal Proceeding that at the time of final disposal learned Judge can form an opinion regarding issue of false evidence and after giving an opportunity of showing cause can pass the order, in a separate Miscellaneous Case.

In this case, learned Judge neither examined all witnesses of this case, nor form any final opinion at the time of passing final order or judgment of the instant proceeding.

In the aforesaid view of the matter, I am of the opinion that order impugned, being prematured, is not at all sustainable in law and is liable to be set aside.

Accordingly, the order impugned dated 02.06.2023 passed by learned Judge, Special Court (POCSO Act), Berhampore, Murshidabad in connection with C. Special Case No – 30/2022 stands set aside.

The appellant/convict is acquitted of the charge under Section 22(3) of the POCSO Act and discharged from his bail.

With this observation, the appeal being **CRA (SB) 120 of 2023** stands disposed of.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.

(Bibhas Ranjan De, J.)