

26.04.2023  
Court-42  
Item No.-28

**CRR 3366 of 2022**

**Dr. Anurupa Roy**  
**VS**  
**The State of West Bengal & Anr.**

For the petitioner: Dr. Anurupa Roy, Adv.,

An order dated 7<sup>th</sup> July, 2022 passed by the learned Chief Judicial Magistrate, Baruipur in G.R Case No.6093 of 2014 arising out of Sonarpur Police Station Case No.1453 of 2014 dated 28<sup>th</sup> August, 2014 under Section 493 of the IPC thereby refusing the petitioner's prayer to commit the case records to the learned Sessions Court in order to consider framing of charge under Sections 376/417/468/471 of the IPC in addition to Section 493 of the IPC.

The petitioner has moved the instant application in person. It is submitted by the petitioner that she lodged a complaint with the Inspector-in-Charge of Sonarpur Police Station alleging, inter alia, that pursuant to an advertisement by the parents of the petitioner for prospective grooms, the opposite party No.2 got in touch with the petitioner's relatives. After negotiations it was agreed that marriage of the petitioner would be solemnized under the Special Marriage Act. On 2<sup>nd</sup> August, 2012, the opposite party No.2 came with a marriage registrar and his two friends. The marriage between the parties was solemnized by observing all formalities in their presence. The opposite party No.2 also handed over marriage certificate of the petitioner. The opposite party No.2 thereafter began residing at the petitioner's house where the marriage was duly consummated. At the time of marriage the opposite party No.2 was a student of M.S at

R.G Kar Medical College and he used to stay in the hostel of the aforesaid college. After the marriage he used to visit the petitioner's house three to four times a week and spent his nights there. This went on for two years and in the meantime after completing his studies, he went back to his native place at Arambagh. The petitioner thereafter visited the opposite party No.2 at his native place in order to reside with him. However, she was not allowed to enter his house. He also denied the factum of marriage with her and refused to admit his signature on the marriage certificate. The petitioner also came to know from the father of the opposite party No.2 that the marriage registrar who had facilitated their marriage under the Special Marriage Act had no license to register such marriage.

Over the above factual circumstances, police submitted charge-sheet against the opposite party No.2 on 17<sup>th</sup> January, 2015 under Sections 493/376/417/468/471 of the IPC against the opposite party.

The case being exclusively triable by the Court of Session was committed by the learned Additional Chief Judicial Magistrate to the court of the learned Additional Sessions Judge at Baruipur and it was registered as SC No.7(6) of 2016 corresponding to ST No.6(6) of 2016. Date was fixed on 4<sup>th</sup> June, 2016 for consideration of charge. The learned Additional Sessions Judge framed charge against the opposite party No.2 under Section 493 of the IPC and the next date was fixed for examination of the witnesses. Subsequently vide order dated 11<sup>th</sup> December, 2017 the learned Additional Sessions Judge, Baruipur transmitted the case record to the learned Chief Metropolitan Magistrate, Baruipur on the ground that offence under Section 493 of the IPC is triable by the learned Magistrate.

Being aggrieved by the order dated 4<sup>th</sup> June, 2016 passed by the learned Additional Sessions Judge the petitioner preferred a criminal revision before this court being CRR 1716 of 2019. The aforesaid revision was disposed of by this Court by an order dated 2<sup>nd</sup> February, 2022. The relevant portion of the order runs thus:-

“The Additional Chief Judicial Magistrate, Baruipur was bound by the order passed by the learned Sessions Judge and as such he could not deviate for addition or deletion of any section and framed charge under Section 493 of the Indian Penal Code as was decided earlier by the learned Sessions Court.

The order dated 4.6.2016 passed by the Additional District & Sessions Judge, Baruipur, South 24 Parganas, is bereft of any reasons and is not a speaking order.

Consequently, as the records reflect that the evidence has already commenced, I give liberty to the present petitioner being the defacto-complainant to take out an application under Section 319 of the Code of Criminal Procedure at the appropriate stage of the trial and the learned trial court, if it is satisfied that prima facie materials are appearing for further proceeding under different set of sections which may not be within the domain of the learned Magistrate, the learned Magistrate will be at liberty to come at a fresh finding and commit the case to the court of sessions for further consideration and for being disposed of in accordance with law.

With the aforesaid observation, CRR 1716 of 2019 is disposed of.”

Pursuant to the said order, the petitioner filed a petition before the learned Additional Chief Judicial Magistrate at Baruipur for committing the case record to the learned Sessions Court. The learned Additional Chief Judicial Magistrate, Baruipur by an order dated 7<sup>th</sup> July,

2022 was pleased to turn down the said prayer on the ground that the said petition was premature. The said order dated 7<sup>th</sup> July, 2022 is under challenge in the instant revision.

It is needless to say that the learned Additional Chief Judicial Magistrate is bound by the order dated 2<sup>nd</sup> February, 2022 passed by a Coordinate Bench in CRR 1716 of 2019.

The Coordinate Bench gave liberty to the petitioner/defacto complainant to take out an application under Section 319 of the Cr.P.C at the appropriate stage of trial and directed the trial court to decide such application if it is satisfied that prima facie materials are appearing for further proceeding under different set of sections which may not be within the domain of the learned Magistrate.

Section 319 of the Code of Criminal Procedure runs thus:-

**“319. Power to proceed against other persons appearing to be guilty of offence.-** (1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub- section (1), then-

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses reheard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the

offence upon which the inquiry or trial was commenced.”

Plain reading of the above mentioned provision goes to suggest that the court trying an accused under the charge of a particular offence can on the basis of evidence on record hold that he may be tried for other offences also and pass appropriate order including the order of commitment at an appropriate stage.

It is needless to say that in the instant case on the basis of the evidence of the defacto complainant and other witnesses if it appears prima facie to the court trying the case that the accused with dishonest intention deceived the petitioner from the very beginning by way of purpose of fake marriage and thereby the accused/opposite party No.2 obtained consent of the petitioner of establishment of physical relationship, only then the learned Magistrate can pass an appropriate order under Section 319 of the Cr.P.C holding, inter alia, that the opposite party No.2/accused is liable to face trial also under the charge under Section 417/376/468/471 of the IPC.

The learned Magistrate rightly held that the petition filed by the petitioner is premature. Therefore, I do not find any reason to interfere with the impugned order.

However, the petitioner is at liberty to file proper application under Section 319 of the Cr.P.C before the learned Magistrate after examination of witnesses on behalf of the prosecution but before the examination of the Investigating Officer. The learned Magistrate shall dispose of such application under Section 319 of the Cr.P.C filed by the petitioner after recording evidence of all the charge-sheeted witnesses except the I.O in accordance with law. With the above order the instant revision is disposed of.

**(Bibek Chaudhuri, J.)**