

11.5.2023
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Ct. no. 3
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CALCUTTA HIGH COURT
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction

CRR 9 of 2023

In the matter of : Nakul Sarkar

...petitioner

Mr. Anirban Banerjee

...for the Petitioner

Mr. Aditi Shankar Chakraborty

Mr. Ujjwal Luksom

Mr. Sagnik Sankar Sikdar

...for the State

This is an application under Section 482 of the Code of Criminal Procedure for setting aside of order no. 30 dated 3.11.2022 passed by learned Judge, Special Court, 2nd court, Jalpaiguri in connection with Sessions case no. 138 of 2020 arising out of Jalpaiguri Women Police Station case no. 130 of 2020 dated 5.12.2020.

The petitioner contended that the opposite party no. 2 lodged written complaint before the Jalpaiguri Women Police Station case no. 130 of 2020 dated 5.12.2020 and on the basis of such written complaint, aforesaid proceeding was initiated under Section 4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO) read with Section 448/376 (3) of the Indian Penal Code. The investigating officer, after completion of investigation, submitted charge-sheet and accordingly, the charge was framed against the accused

person. The petitioner alleged that thereafter on several occasions, summons were issued upon the prosecution witnesses but neither the defacto-complainant nor the victim girl turned up to give their evidence as prosecution witnesses. Subsequently, the petitioner moved an application for bail under Section 439 of the Code of Criminal Procedure before the Hon'ble Court at Calcutta and the Hon'ble Court was pleased to direct the court below to take appropriate steps for examination of victim girl and defacto-complainant at an early date. Accordingly, learned court below issued warrant against the witnesses and the date was fixed on 2.11.2022 for their appearance. As on the said date, court was closed due to Jagaddhatri Puja, the next date was fixed on 3.11.2022 but on that date, learned trial court arbitrarily forced the advocate on record to retire from the case and appointed a lawyer from the DLSA without the consent of the petitioner. Petitioner alleged that the court below had violated the fundamental right of the petitioner/accused by not allowing the petitioner to cross examine the witnesses by the advocate of his choice. He further submits that the entire action of the learned trial Judge is a misuse and abuse of the process of criminal law. Accordingly, he prayed for setting aside the order impugned.

Learned counsel for the State submits that the order impugned states that the conducting lawyer had retired from the case and as such learned court below asked the DLSA for

appointment of a lawyer to represent the accused as the petitioner/accused did not have financial capacity to appoint some other lawyer. Accordingly, the examination and cross examination of the witnesses have been completed and there is nothing wrong in the order impugned and as such the order impugned does not call for any interference.

I have gone through the impugned order. The impugned order clearly speaks that on 3.11.2022, two witnesses, i.e. the defacto-complainant and the victim girl were produced before the court on the strength of WWA issued by the court in pursuance of the order of this court passed in CRM (DB) no. 274 of 2022 dated 15.9.2022. The court below specifically observed, since the witnesses including victim girl are present, it is expedient to examine them and accordingly, the conducting advocate namely, Kamaleswar Roy, who represented the accused, was called by the court but he submitted before the court that he has no instruction from his client and also submitted before the court for retiring him from the case. Accordingly, after such retirement, the accused became undefended and accordingly, the court thinks it fit that the accused should be defended by an advocate to be appointed from legal aid Panel of District Legal Services Authority (DLSA), Jalpaiguri. Learned court below has further noted that on enquiry, it appears that said two witnesses have migrated to somewhere in Assam and their whereabouts were

traced out with tough effort and they were not willing to attend the court due to their financial crunch. However, since the recorded lawyer has been retired from the case, the court further noted that the accused is not in a position to appoint private lawyer from his own expenses. The court below asked DLSA to appoint a lawyer who can represent the accused.

From the latter portion of the day's order, it is found that on the self-same day, one Aniruddha Taradfar, Advocate was appointed by the District Legal Services Authority to represent the accused in this case. Accused did not raise any objection in such appointment. Accordingly, both the aforesaid witnesses were produced before the court and they were examined and then cross examined on behalf of the accused. Accordingly, both the witnesses were discharged.

Needless to say, criminal trial is being conducted in presence of accused. If an accused, one fine morning, discovered that cross-examination done by his lawyer on his behalf is not satisfactory, then the court is helpless to render assistance to such accused simply because such precedent would open a flood gate for the accused in all other pending criminal cases.

I do not find any merit in the present application and as such it is liable to be rejected.

In view of above, CRR 9 of 2023 is dismissed.

However, the court below is requested to expedite the trial and to make every endeavour to conclude the entire proceeding preferably within a period of six months from the date of communication of the order without granting any unnecessary adjournment to either of the parties.

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

(Ajoy Kumar Mukherjee, J.)