

13.10.2023

Item No.11

Ct.No.4

rc.

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CRIMINAL REVISIONAL JURISDICTION**

CRR No. 174 of 2023

In the matter of : **Md. Altaf & Anr.** ... Petitioner.

Mr. Sourav Ganguly
Mr. Gopal Roy
Mr. Bibek Tarafder ... For the Petitioners

Mr. Aditi Shankar Chakraborty
Mr. Ujjal Lucksom ... For the State

Mr. Sourav Lohani ...for the defacto complainant

Petitioners have knocked the door of this Court by preferring this application under Section 401 read with Section 482 of the Code of Criminal Procedure (hereinafter referred to as the “Code”) with a prayer for quashing Phansidewa Police Station Case No. 444 of 2019 under Sections 498A/379/376D of the Indian Penal Code (in short, “IPC”).

Mr. Ganguly, learned advocate representing the petitioners contends that the de-facto complainant happens to be the sister-in-law of the accused persons/ petitioners. No such incidents as alleged in the FIR had occurred. He further contends that following a dispute cropped up in the family relating to a property the complainant lodged the complaint being influenced by the local political goons. He submits that the disputes cropped up in between the complainant and the accused persons has been amicably settled. Mr. Ganguly

vociferously contends that medical report of the victim does not lend support to the prosecution story.

Drawing my attention to an affidavit, he submits that victim is present in the Court and standing in open court, she has declared on oath that no such incident had occurred. He further submits that considering such declaration of the victim/complainant and basing upon the affidavit affirmed by her, the proceeding may be quashed. According to Mr. Ganguly after the real fact comes out, continuation of the criminal case would be abuse of process of the Court and the petitioners will be highly prejudiced if they are forced to face the trial.

Placing reliance upon a judgment pronounced by a coordinate Bench of this Court in CRR No. 54 of 2021 (Ratan Mondal @ Swapan Vs. State of West Bengal & Ors.), Mr. Ganguly submits that in like situation, a direction was given to get the statement of the victim recorded under Section 164 of the Code and investigating officer was directed to take decision as to whether any trial was required or not.

Mr. Chakraborty, learned counsel appearing on behalf of the State opposes such prayer of petitioners.

By a catena of judgments, the Hon'ble Supreme Court of India laid down the principles that power to quash the criminal case is not be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder , rape , dacoity etc. Such offences are

not private in nature and have a serious impact on society. (See, case of Gian Singh –vs- State of Punjab reported in (2012)10 SCC 303).

From the documents placed before me, it transpires that a Phansidewa P.S. Case no. 444 of 2019 dated 11.11.2019 under sections 498A/379/376D IPC was started treating a complaint lodged by the complainant under Section 156(3) of the Code as an FIR. Medical examination of the victim was done and after completion of investigation, charge-sheet *vide.* no. 275 of 2020 dated 18.07.2020 under section 376D IPC was submitted. From the prayer portion of the petition, it is explicit that case has been committed to the Court of Session and registered as Sessions Case no. 17 of 2022. Ultimately, the case has been transferred to the Court of learned Fast Track Court, Siliguri for disposal.

During course of hearing, the victim was present in Court with her proof of identity (Aadhar Card). She participated in the hearing being represented by Mr. Lohani, learned advocate. She also submitted one affidavit. In her affidavit, she has declared on oath that no such incident had occurred and the accused persons did not commit the alleged offences.

Admittedly, offences punishable under section 376D IPC is not compoundable offence and the Hon'ble Supreme Court has been pleased to lay down the guideline that in case of heinous offence like rape, inherent power to quash the case

should not be exercised even if the case is amicably settled. The learned Trial Court after taking evidence can only decide as to whether accused persons had committed the offence or not. The possibility of tampering the evidence cannot be ruled out at this stage.

In the case of Ratan Mondal alias Swapan, the case was started under sections 376/417 IPC. Subsequently, the complaint and the victim got married and hence, in view of such changed circumstances, a coordinate bench of this Court granted liberty to the petitioner and the complainant to approach the investigating officer. If required, the investigating officer was asked to advance prayer for further recording of the statement of the complainant under section 164 of the Code and liberty was given to the investigating officer to come a finding whether in the changed factual circumstances, any trial for the case is required or not.

Case of Ratan Mondal alias Swapan (supra) is distinguishable on facts.

In such conspectus, prayer for quashing of the case being the Sessions Case no. 17 of 2022 is turned down.

Section 173(8) of the Code lays down that nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under Sub-Section (2) has been forwarded to the Magistrate and, where upon such investigation the officer-in-charge of the police station obtains further evidence, oral or documentary, he shall forward to the

Magistrate a further report or reports regarding such evidence in the form prescribed.

Hence, as per the provision of S.173(8) of the Code, the investigating officer can hold further investigation even after filing the charge-sheet. The narrow view that once the charge sheet under section 173(2) is filed, the police cannot touch the investigation and cannot reopen the investigation, cannot be accepted. If fresh materials come, the police can submit supplementary charge-sheet also. (See, case of Ramlal Narang –vs- State reported in AIR 1979 SC 1791).

In view thereof, the petitioner and the complainant are at liberty to approach the investigating officer with all relevant documents including the medical report, affidavit submitted by the complainant before this court. If the investigating officer thinks it to proper, he can seek permission from his superiors and the Court to hold further investigation.

A Court should not issue directions to investigate the case from a particular angle. If the investigating officer is so approached, he can advance prayer for further recording of the statement of the complainant under section 164 of the Code. The investigating officer, if holds further investigation shall send report to the Magistrate who in turn shall send it to the Court where the case has been committed for trial. The investigating officer shall also examine as to whether evidence has been tampered in the case or not.

I am informed that charge has not been framed as yet. Needless to observe, if any further report is filed after holding the further investigation, the learned Trial Court shall take it consideration of the report at the time of framing the charge.

Such further investigation may be done by the Officer-in-charge or Inspector-in-charge of the concerned Police Station or any officer superior in rank within the meaning of Section 36 of the Code.

If no such further investigation is held and no further report is filed, the learned Trial Court shall examine the complainant first and then it shall examine the other witnesses. If the prosecution case does not get support from the evidence of the complainant and other witnesses, the learned Trial Court shall take decision as to whether examination of all witnesses are required or not.

With these observation and order, this application is thus disposed of.

Urgent certified website copy of this order, if applied for, be furnished to the parties upon compliance of necessary formalities.

(Partha Sarathi Chatterjee, J.)