

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 1493 of 2017
With
CRAN 1 of 2017 (Old CRAN 2809 of 2017)

Smt. Lakshmi Rajwar
Versus
The State of West Bengal and Another

For the State : Ms. Faria Hossain, Adv.
Mr. Atulya Sinha, Adv.

Heard on : 16.04.2024

Judgment on : 15.07.2024

Ajay Kumar Gupta, J:

1. The instant revisional application has been filed by the petitioner challenging the legality, propriety and correctness of the impugned order dated 27.03.2017 passed by the learned Additional District and Sessions Judge, Raghunathpur in connection with Sessions Case No. 218 of 2014 arising out of Santaldih Police Station Case No. 12/2014 dated 03.04.2014 under Sections 363/366A of the IPC, thereby rejecting the prayer of the petitioner for inclusion of Section 12 of the Protection of Children from Sexual Offences Act, 2012.

2. The essential facts of the instant case are relevant for the purpose of disposal of this instant case as under:

2a. The petitioner is the de-facto complainant, who had lodged a written complaint with the Inspector in-Charge of Santaldih Police Station alleging, *inter alia*, that on 31st March, 2014, the accused/opposite party no. 2 had enticed minor daughter of de-facto complainant/petitioner with oblique motive resulted in registration of Santaldih Police Station Case No. 12/2014 dated 03.04.2014 under Sections 363/366A of the IPC against the opposite party no. 2. Finally investigation culminated by filing charge sheet being Santaldih PS Charge Sheet No. 28/14, dated 31.05.2014 under

Sections 363/366A of the IPC against the opposite party no. 2. After receiving the charge sheet, the learned Additional Chief Judicial Magistrate, Raghunathpur has taken cognizance of the offence punishable under Sections 363/366A of the IPC and committed the case to the Court of Sessions where the case was registered as Sessions Case No. 218 of 2014.

2b. Subsequently, the said case was transferred to the learned Additional Sessions Judge, Raghunathpur for trial and disposal wherein the petitioner filed an application praying for addition of Section 11(vi) punishable under Section 12 of the Protection of Children from Sexual Offences Act, 2012 since the victim/daughter of the de-facto complainant was minor at the relevant point of time but the said prayer was rejected by the learned Court below without justified reason though the addition of Sections was compulsorily necessary. The power has been vested upon the learned Trial Court under Section 216 of the Cr.PC. Therefore, the impugned order is liable to be set aside and prayer for addition of Section 11(vi) punishable under Section 12 of the Protection of Children from Sexual Offences Act, 2012 is required to be allowed for proper and effective disposal of the Sessions Case No. 218 of 2014. As such, the instant case has come up before this Court for its disposal.

3. None appears on behalf of the petitioner at the time of call. No accommodation was also sought for. It further appears from the order dated 20th March, 2024 that in spite of service of administrative notice, no one appears on behalf of the petitioner as well as the opposite party no. 2 on call. No accommodation was sought for. Several opportunities were given to them. Despite of the fact, no one turned up to represent the petitioner or opposite party no. 2.

SUBMISSION ON BEHALF OF THE STATE:

4. Learned counsels appearing on behalf of the State submitted that they are no more interested to proceed with the case since both the accused and victim are now leading conjugal life as husband and wife. After completion of 18 years of her age, she got married with said accused/opposite party no. 2 and now they are living together peacefully. The status report of the proceeding filed by the police is taken into consideration, wherefrom it reveals, the trial is still going on. The examination of P.Ws. 1 to 7 and P.W. 10 has already been completed before the learned Trial Court and remaining witnesses i.e. P.Ws. 8, 9 and 11 are pending for examination and next date of examination of witnesses fixed on 19.07.2024.

4a. The learned counsels further submitted that at the time of commission of offence, the victim girl was aged about 13 years old and the copy of FIR and the case diary is supporting her contention. It is further submitted there is no such material available in the case diary to add Sections as prayed for.

DISCUSSIONS, ANALYSIS AND CONCLUSION OF THIS COURT:

5. Having heard the submissions of the learned counsels appearing on behalf of the State and on perusal of the case records, it appears that after completion of investigation, a charge sheet was submitted being Santaldih PS Charge Sheet No. 28/14, dated 31.05.2014 under Sections 363/366A of the IPC. However, the petitioner prayed for addition of Section 11(vi) punishable under Section 12 of the Protection of Children from Sexual Offences Act, 2012. However, the learned Court below did not find any material against the petitioner for commission of such alleged offence.

6. It is true that the Court may alter the charge or add any charge at any point of time before judgment is pronounced under Section 216 of the Cr.PC. However, there must be some materials against the accused persons for such addition of charges.

7. Sections 11 and 12 of the POCSO Act read as under:

“11. Sexual harassment. —A person is said to commit sexual harassment upon a child when such person with sexual intent, —

(i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or

(ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or

(iii) shows any object to a child in any form or media for pornographic purposes; or

(iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or

(v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or

(vi) entices a child for pornographic purposes or gives gratification therefor.

Explanation. —Any question which involves “sexual intent” shall be a question of fact.

12. Punishment for sexual harassment. — Whoever, commits sexual harassment upon a child shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.”

8. Therefore, it is very clear that the offence, as alleged under the provisions of Sections 11 and 12 of the POCSO Act is not attracted in the instant case against the accused since no such sufficient materials available in the record. This is a clear case offences punishable under Sections 363/366A of IPC. Accordingly, the prayer for addition of Section 11(vi) punishable under Section 12 of the Protection of Children from Sexual Offences Act, 2012 was rightly rejected by the learned Court below, which does not require any interference.

9. Consequently, the instant revisional application has devoid of merit.

10. Accordingly, **CRR 1493 of 2017** is, thus, **dismissed**. **CRAN 1/2017 (Old CRAN 2809/2017)** is also, thus, disposed of.

- 11.** Case Diary, if any, is to be returned to the learned Advocates for the State.
- 12.** Let a copy of this judgment and order be sent to the learned Court below for information and taking necessary action.
- 13.** Interim order, if any, stands vacated.
- 14.** Parties shall act on the server copies of this order uploaded on the website of this Court.
- 15.** Urgent photostat certified copy of this judgment, if applied for, is to be given as expeditiously to the parties on compliance of all formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)