

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 1914 of 2021

Kismot Sekh @ Sanoar Saikh
Versus
The State of West Bengal & Another

For the Petitioner : Mr. S.K. Humayun Reza, Adv.

For the Opposite Party No. 2 : Mr. Sk. Morshed Ali, Adv.

For the State : Ms. Faria Hossain, Adv.
Ms. Sima Biswas, Adv.

Heard on : 01.04.2024

Judgment on : 26.06.2024

Ajay Kumar Gupta, J:

1. This Criminal Revisional application has been filed by the petitioner/sole accused under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 seeking quashing of the proceeding arising out of Sagardighi P.S. Case No. 173/19 dated 29.04.2019 under Sections 448/376/511 of the Indian Penal Code corresponding to G.R. Case No. 733 of 2019 pending before the Court of Learned Additional Chief Judicial Magistrate, Jangipur, Murshidabad contending therein that the petitioner is a cultivator and is innocent. He has been falsely implicated into this case due to village rivalry and the incident narrated by the de-facto complainant is false and frivolous and got no legs to stand.

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

2a. Victim lady lodged a written complaint before the Officer-in-Charge, Sagardighi Police Station accusing therein that her husband resides outside for his profession works and she along with her minor daughter resides at house and taking advantage of this, the accused on 29.04.2019 at about 1.00 A.M. when she was asleep, entered into her residential house by jumping over the boundary wall and

embarrassed her. She woke out and resisted him and tried to cry out but the accused person closed her mouth by hand and tried to commit rape upon her but she any how rescued herself from him and cried out then accused person fled away from there.

2b. On the basis of said written complaint, a case was registered vide Sagardighi P.S. Case No. 173/19 dated 29.04.2019 under Sections 448/376/511 of Indian Penal Code against the accused and the same was assigned for investigation to the investigating officer.

3. Under the above facts and circumstances, petitioner has filed this case and same has come up before this Bench for disposal.

SUBMISSION ON BEHALF OF THE PETITIONER:

4. Learned counsel appearing on behalf of the Petitioner vehemently argued and submitted that the story of the de-facto complainant is concocted and false and after thought to implicate the petitioner falsely into this case due to previous village rivalry. The story narrated by the de-facto complainant is totally absurd and false since she has stated that when she was asleep, the petitioner entered

into her house by over jumping of boundary wall and embarrassed her. It is totally impossible when a person asleep to see a person entering into the house by jumping the boundary wall.

5. It is further submitted that nobody came to the house of de-facto complainant to rescue her when she cried. Accordingly, the instant case is totally false and frivolous only to harass the petitioner. No such incident happened at all. Accordingly, the proceeding is liable to be quashed otherwise petitioner would suffer greatly and prejudice to such false allegation.

SUBMISSION ON BEHALF OF THE OPPOSITE PARTY NO. 2:

6. On the other hand, learned counsel appearing on behalf of the opposite party no. 2 submitted that the incident took place at night when de-facto complainant was sleeping at her house. At that point of time, the petitioner entered into her house and tried to commit rape upon her in absence of her husband. Anyhow she escaped herself and lodged a complaint before Sagardighi police station on the same day i.e. on 29.04.2019 at about 14.05 hours. Her statement was recorded under Section 164 of the Cr.PC and she has stated the entire episode which was taken place in her residence.

Accordingly, this case may be dismissed since there was no any village rivalry between the parties. It is further submitted that it is unexpected that a housewife would lodge such type of allegation at the stake of her life and future as lead in the society only for implicating petitioner.

SUBMISSION ON BEHALF OF THE STATE:

7. Learned counsels appearing on behalf of the State produced the case diary and further submitted that the accusation made by the de-facto complainant is serious one. When she was at her residence, the petitioner entered into her house and tried to commit rape upon her in absence of her husband. During investigation, sufficient materials have been collected by the investigating officer. The victim had specifically stated about the commission of offence committed by the petitioner at her residence in absence of her husband. Her statement was also recorded before the learned Judicial Magistrate under Section 164 of the Cr.PC where she had narrated the entire incident before the Learned Magistrate. Accordingly, there is a strong prima facie case against the present petitioner. Accordingly, the application praying for quashing of the proceeding may be dismissed.

DISCUSSIONS, ANALYSIS AND CONCLUSION BY THIS COURT:

8. Heard the arguments of the parties and on perusal of the materials available in the case diary as well as record, it appears on 29.04.2019 at about 14.05 hours a complaint was received from the de-facto complainant to the effect that on 29.04.2019 at about 1.00 AM in absence of her husband, the petitioner/accused entered into her house and tried to commit rape upon her resulted in registration of Sagardighi P.S. Case No. 173/19 dated 29.04.2019 under Sections 448/376/511 of Indian Penal Code. During investigation, the investigating officer recorded statements of the local witnesses under Section 161 of the Cr.PC, wherefrom it reveals the incident was taken place with the de-facto complainant on the alleged date, time and place. Furthermore, from the perusal of the statements of the de-facto complainant recorded under Section 164 of Cr.PC, there is a specific allegation against the present petitioner. Accordingly, there is a strong prima facie case against the present petitioner under Sections 448/376/511 of the Indian Penal Code and the same has been established against the sole FIR named accused/petitioner during investigation. The question rose by the learned advocate of the petitioner that how she has seen, the petitioner entered into her house by over jumping of boundary wall when she was asleep and embarrassed her is matter of trial.

9. The Hon'ble Supreme Court in ***Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and Others***¹ has also laid down the several guidelines to be followed by the court while exercising its power under Section 482 of the Cr.P.C./or under Article 226 of the Constitution of India out of those guidelines, few are as follows:-

“i) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the ‘rarest of rare cases (not to be confused with the formation in the context of death penalty).

ii) Criminal proceedings ought not to be scuttled at the initial stage;

iii) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

iv) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the Court to be more cautious. It casts an onerous and more diligent duty on the Court;

v) While examining an FIR/complaint, quashing of which is sought, the Court cannot embark upon an

¹ (2021) SCC Online SC 315

enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

vii) When a prayer for quashing the FIR is made by the alleged accused and the Court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The Court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the Court has to permit the investigating agency/police to investigate the allegations in the FIR;"

10. In the light of above discussions and also in view of the aforesaid guidelines laid down by the Hon'ble Apex Court, this Court does not find any sufficient reasons or cogent grounds to quash the proceeding initiated against the present petitioner being Sagardighi P.S. Case No. 173/19 dated 29.04.2019 under Sections 448/376/511 of Indian Penal Code.

11. Consequently, **C.R.R. 1914 of 2021** is, thus, dismissed without order as to costs. Connected applications, if any, are also, thus, disposed of.

12. Case Diary is to be returned to the learned counsel for the State.

13. Interim order, if any, stands vacated.

14. Let a copy of this judgment be sent to the learned Court below for information.

15. Parties shall act on the server copies of this judgment uploaded on the website of this Court.

16. 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)