

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

CRR 3247 of 2022

**Shri Chanchal Bishnu & Anr.
Vs.
The State of West Bengal & Anr.**

For the Petitioner	:	Mr. Tapas Kumar Ghosh Mr. Tanmay Chowdhury
For the State	:	Ms. Anusuya Sinha Ms. Jonaki Saha
For the Opposite party No.2	:	Mr. Samrat Choudhury Mr. Debnandan Bhattacharyya
Heard On	:	05.09.2024
Judgment on	:	10.09.2024

Ajoy Kumar Mukherjee, J.

1. This application pertains to a prayer for quashing of the proceeding being ST 05 (7) 2022 under sections 341/354/354A/506/ 34 of the Indian Penal Code (IPC) read with sections 8/10/12 of the Protection of Children from Sexual Offences Act 2012 (hereinafter called as POCSO Act), presently pending before learned Additional Special judge second Court, Suri, Birbhum.

2. Petitioners contention is that about 20 years of marriage some dispute cropped up in between petitioner no.1 and his wife. As a result series of litigations are going on between the aforesaid husband and wife. It is alleged by the petitioner that the wife of petitioner just to harass and humiliate the petitioner no.1 filed a complaint on 14.03.2020 under section 156(3) of the Code of Criminal Procedure, with a prayer for directing concerned police station to start investigation under sections 498A/323/325/506 of the India penal Code read with section 3,4 of the Dowry Prohibition Act and as per direction, Suri police station case no. 23 of 2021, dated 22nd January, 2022 was registered for investigation. After completion of investigation police submitted charge sheet on August 31st 2021 under sections 341 /506/34 of the Indian Penal Code against the petitioners/accused persons.

3. However, learned Magistrate on perusal of materials was of the view that this case is serious in nature and statement of the complainant under section 164 of the code is required to be recorded and as such learned magistrate directed for further investigation. Thereafter, statement of the complainant and the victim was recorded by the investigating authority and sections 8/10/12 of the POCSO Act was added. Thereafter police submitted charge sheet for the second time under sections 341/323/354A /506/34 of the Indian Penal Code, read with sections 8/10/12 of the POCSO Act, 2012 and the case was transmitted for disposal to the aforesaid Special Court constituted under POCSO Act. Thereafter on 22.07.2022 aforesaid court below framed charge against petitioner Amit Bishnu under section 354A of IPC read with section 08 of POCSO Act and under section 506 of IPC and section 17 of POCSO Act against chanchal Bishnu.

4. Being aggrieved by the aforesaid proceeding, Mr. Ghosh learned counsel appearing on behalf of the petitioner submits that on perusal of the written complaint it appears that when the alleged occurrence took place the victim became major and as such alleged offence under POCSO Act against petitioners do not attract. He further submits that the entire core of dispute has arisen out of marital relationship by and between the petitioner no. 1 and his wife and several cases are pending against each other and the present complaint has been filed with a view to put the petitioners behind the bar on nasty allegations only to satisfy her ill motive. Accordingly petitioners have prayed for quashing the entire proceeding.

5. Learned counsel appearing on behalf of the opposite party no.2 raised objection against the contention made on behalf of the petitioners and argued that on plain reading of the complain as well as materials available in the case diary clearly suggest that when the offence committed upon the victim, she was minor and accordingly after recording statement of the defacto complaint and the victim under section 164 of Cr.P.C, charge-sheet has been submitted under the relevant provisions of the POCSO Act and the charge has been framed rightly under the relevant provisions of the POCSO Act. He further submits that the truth will reveal after conclusion of trial and at this stage the question of discharging the accused persons under which they are being charged do not arise and as such he prayed for dismissal of the present application.

6. Ms. Sinha learned counsel appearing on behalf of the state placed the case diary and leaves the matter for the discretion of the court.

7. I have considered submissions made by both the parties.

8. From the documents available on record, it appears that in the FIR the date of occurrence has been stated as 02.10.2021, 05.10.2021 and 06.10.2021. In the FIR, it has also been stated that the victim was born in the year 2003. However from the annexed documents it appears that the victim was born on 21.04.2000. In the FIR it has also been alleged that when the victim was aged about 8 years the accused no.2 has allegedly committed sexual offences which may attract POCSO Act. It has been argued by the petitioners that even if said statement of the FIR is taken to be true then victim attended 8 years in the year 2008 since she was born in 2000 and the POCSO Act came into force in 2012 and as such present case does not attract POCSO Act. In support of the date of birth of the victim, petitioners have also relied upon complainants another Application filed under section 12 of the Protection of Women from Domestic violation act 2012, wherein complainant has stated that the victim was aged 20 years and the said application was filed on 14th December, 2020.

9. It is curious enough as appearing from order of the Magistrate dated 17.02.2022 passed in G.R. Case no. 1584 of 2021, that the charge sheet against the accused person was filed for the first time under sections 341/323/354/506/34 IPC and learned Magistrate accepted the charge sheet and cognizance also taken under the said offences but on the self same day by a later order he observed that no prayer was made on behalf of the investigating authority for recording statement of defacto complainant and victim under section 164 Cr.P.C., though there is allegation to the effect that the victim was minor when the offence was committed against her.

10. After accepting charge sheet and after taking cognizance of said offences, the subsequent order of making further investigation with the observation that allegation discloses that the victim was minor at the time of offence, is clearly a perverse finding.

11. In view of such order, which suffers from impropriety, Magistrate recorded statement of the defacto complainant and the victim under section 164 of the Cr.P.C. wherein victim who has been tutored in the meantime said that when she was 17 years, the alleged offence under the POCSO Act occurred. Be it mentioned that the order for recording statement was made on 17.02.2022 and the statement of victim was recorded on 23.02.2022 and previously no statement of victim was recorded. However, defacto complainant though made statement under section 164 of Cr.P.C after order of Magistrate but she had not stated anything clearly, that the victim was minor, when the alleged offence committed upon her.

12. Be it also mentioned that the statement of defacto complainant was recorded under section 161 of Cr.P.C., on 20.12.2021 i.e. before the aforesaid direction made by the magistrate on 17.02.2022 and in the said statement defacto complainant has not made any allegation against the accused persons that they had committed any offence against the victim when she was minor. However the statement of the victim and the defacto complainant recorded after passing the aforesaid order dated 17.02.2022 discloses that victim has stated that the alleged offence was committed when she was 17 years old. The statements under section 161 Cr.P.C was further recorded by police on 21.02.2022., after aforesaid order of Magistrate on 17.02.2022.

13. The aforesaid contradiction in recorded statements of victim and defacto complainant under section 161 of Cr.P.C. and their subsequent statement recorded under section 164 Cr.P.C. clearly discloses that the subsequent allegations made in the statements recorded under section 161 and 164 of the Cr.P.C. are clearly afterthought and tutored and not at all believable and has been made wrecking vengeance upon the petitioners in order to spite them. It is also not clear from the order of the court below as to whether he had at all taken cognizance upon offence under the said provisions of POCSO Act 2012 though by order no.1 he had framed charge under section 354A read with section 8 of the POCSO Act against accused Amit Bishnu and section 506 of IPC and section 17 of POCSO Act against accused Chanchal Bishnu.

14. While framing charge under section 228 of Cr.P.C, the court must ensure that the accusation made against the accused is not frivolous and there are some materials for proceeding against him. The mere fact that Magistrate referred the matter for recording statement of victim and defacto complainant and upon such direction their statements were recorded may not be enough to hold that there is reasonable probability or chance of the accused being found guilty inspite of abovementioned contradictions in the statements, which shows *mala fide* on the part of prosecution witnesses. Time and again it has been reiterated that at the time of framing charge, court can neither act merely as post office nor mouth piece of prosecution but he has to find out whether a *prima facie* case is made out against the petitioners/accused under the Act or not.

15. In view of aforesaid discussion, the order no.1 dated 22.07.2022 in ST 05(7) 2022 by which the court below has framed abovementioned charges against the accused person and all subsequent orders are hereby quashed. The court below is directed to transmit the case record to learned Magistrate from whom the record was received and the said learned Magistrate is directed to continue the criminal proceeding from the stage where he took cognizance under sections 341/323/354/506/34 IPC, vide order dated 17.02.2022 in G.R. case no. 1584 of 2021.

16. CRR 3247 of 2022 is accordingly disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(AJOY KUMAR MUKHERJEE, J.)