

18.01.2024

(2)

(ap)

C.R.R. No. 4676 of 2023

In re : XXX.

..Petitioner.

Re: Application under Article 227 of the
Constitution of India filed on 05.12.2023

Mr. Sayan Chattopadhyay.

...for the petitioner.

Mr. Debasish Roy, Id. P.P.

Mr. Arijit Ganguly,

Mr. Sanjib Kumar Dan.

...For the State.

Mr. Pawan Kumar Gupta,

Ms. Sofia Nesar,

Mr. Santanu Sett.

...For the opposite party no.2.

1. The revisional application in substance challenges an order of the Magistrate dated 12th September, 2023, whereby the investigation into FIR No. 146 dated 2nd September, 2023 has been segregated against the two accused persons.

2. It appears from the records that the charge-sheets have been filed separately against the two accused persons. It further appears that in respect of the first accused person, a charge-sheet no. 198 of 2023 has been filed under the provisions of the Protection of Child from Sexual Offences Act, 2012. Charges have been framed and the case is fixed before the POCSO Court, Calcutta at Bichar Bhawan on 20th January, 2024 for recording the evidence of the victim.

3. In so far as the investigation against the second accused person is concerned, charge-sheet No.198A of 2023 dated 23rd November, 2023 has been filed under Sections

354A/354D/506/114 of the Indian Penal Code. Committal is yet to be done.

4. This Court has carefully considered the submissions of the Counsel for the victim as well as the learned Public Prosecutor. The Case Diary has also been perused.

5. Admittedly, a single FIR was registered against the two accused persons being FIR No. 146 of 2023 dated 2nd September, 2023 by the Jorasanko Police Station.

6. The statements of the victim as well as the complainant, indicate to this Court that the allegations against the opposite party nos.1 and 2, are co-related and arose out of a continuing chain of events.

7. The participation of the opposite party no.2 in the allegations against the opposite party no.3 and the circumstances leading to the offence alleged against the opposite party no.2 are similar and cannot be ruled out. In the opinion of this Court, it would be appropriate if the Court trying the offence against the opposite party no.2, also tries those against the opposite party no.3. The trials may be held simultaneously and along with one another.

8. This Court has noted the objections of the learned Public Prosecutor, Mr. Debasish Roy, that the petitioner had sufficient time to challenge the charge-sheet No.198A dated 23rd November, 2023 and has chosen not to do the same. The petitioner could also have challenged the impugned order bifurcating the investigation against the two opposite parties that was passed in September, 2023. However, this delay by the petitioner may not by itself be fatal.

9. It is now well-settled that the convenience of a victim in offences relating to women, is a factor to be considered. The accused persons are unlikely to be prejudiced.

10. Hence, the charge-sheet No.198A of 2023 dated 23rd November, 2023 shall stand transferred and be taken up as committed to the Judge, Special Court under the POCSO Act, Calcutta at Bichar Bhawan. The trials arising out of Charge-sheet No. 198A of 2023 dated 23rd November, 2023 and 198 of 2023 shall be take place before the Special Court (POCSO) at Bichar Bhavan, Kolkata, simultaneously and analogously.

11. The Additional Sessions Judge concerned while framing charges in respect of charge-sheet No. 198A of 2023 dated 23rd November, 2023 shall have due regard to the statements recorded by all the parties and evidence placed by the Prosecution as also the complaint and shall, therefore, be at liberty to frame charges under any additional sections of the Indian Penal Code.

12. With the aforesaid directions, the instant revisional application shall stand disposed of.

13. Urgent photostat certified copy of this order, if applied for, be supplied to the parties as early as possible.

(Rajasekhar Mantha, J.)

