

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
Criminal Revisional Jurisdiction
Appellate Side**

**Present:
The Hon'ble Justice Rai Chattopadhyay**

CRR 347 of 2023

**Jitesh Ojha
Vs.
The State of West Bengal & Anr.**

With

**CRR 13 of 2024
Victim
Vs.
The State of West Bengal & Anr.**

For the Petitioner : Mr. Pratap Khati
(CRR 347 of 2023)

For the Respondents : Dr. Arjun Chowdhury,
(CRR 347 of 2023) : Ms. Pratusha Dutta Chowdhury,
: Mr. Riya Agarwal,
: Mr. Koushik Kr. Kanu,
: Ms. Tulip Saha.

For the State : Mr. Aditi Shankar Chakraborty,
Ld. APP. :
(CRR 347 of 2023) : Mr. Sourav Ganguly.

For the Petitioner : Dr. Arjun Chowdhury,
(CRR 13 of 2024) : Ms. Pratusha Dutta Chowdhury,
: Mr. Riya Agarwal,
: Mr. Koushik Kr. Kanu,
: Ms. Tulip Saha.

For the State : Mr. Aditi Shankar Chakraborty,
Ld. APP. :
(CRR 13 of 2024) : Mr. Ujjal Luksom,
: Mr. Subhasish Mishra.

Heard on :05/09/2024
Judgment on: 05/09/2024

RaiChattopadhyay,J.

1. The two criminal revision cases No. CRR 347 of 2023 and CRR 13 of 2024 are heard together and taken up for adjudication by dint of this common judgment.
2. In the cases, as mentioned above, the respective petitioners have assailed the order of Judge, Special Court under Scheduled Castes and Schedules Tribes (Prevention of Atrocities) Act, Darjeeling dated October 17, 2023 in S.T No. 19(10)/2023.
3. The impugned order as above is with regard to framing of charge in the case, under Section 354/509 of Indian Penal code and Sections 3(1)(x)(xi) and (xii) of the Scheduled Castes and Schedules Tribes (Prevention of Atrocities) Act, 1989.
4. Since CRR 347 of 2023 is the first in the timeline, let that be discussed first.
5. The accused person is the petitioner in this case. Learned Advocate Mr. Khati is appearing for the accused person. He has contended that the criminal case as above would not be sustainable as against his client, due to the reason of enormous unexplained delay of twenty two years in filing the same. He would also indicate to the alleged vagueness of the

First Information Report by stating that the said FIR is devoid of any particulars regarding the date, place of occurrence, or any other necessary details. He would submit that the FIR is not maintainable due to its vagueness.

6. The petitioner in the said case, that is, the accused person in the criminal proceeding as mentioned above, would seek that the entire proceeding before the trial Court against him may be quashed due to the frivolousness of the allegations against the petitioner.
7. CRR 13 of 2024 has been preferred by the de facto complainant.
8. Mr. Chowdhury representing the said petitioner would submit that from the FIR and other materials available before the Court, would be containing sufficient and strong *prima facie* material to frame charge against the accused person under Section 376 of the IPC. He says that as to this aspect, the trial Court has not applied mind and duly considered the materials on record. Therefore, having not framed a charge under Section 376 of the IPC, the trial Court has committed gross error. Mr. Chowdhury would suggest that Court's non-application of mind as well as erroneous perception of the facts and circumstances of the case on the basis of the available documents would be evident from the said impugned order dated October 17, 2023. He says that the Court should have duly and subjectively assessed that the ingredient of an offence under Section 376 of the IPC is *prima facie* established from

the materials collected during investigation as well as FIR and charge sheet. Thereby it has not been proper on part of the Court, not to frame a charge against the accused person under Section 376 of IPC. On this count, Mr. Chowdhury says that the impugned order dated October 17, 2023 would be a nullity in the eye of law and liable to be set aside.

9. The petitioner in CRR 13 of 2024 is the opposite party No. 2 in CRR 347 of 2023, whereas the petitioner in CRR 347 of 2023 is the opposite party No. 2 in CRR 13 of 2024. The State is the opposite party No. 1 in both the cases.
10. Mr. Chakraborty, Ld. APP has represented the State. He has handed over to the Court the case diary. He has submitted on the basis of the materials available therefrom, that from the statement of the complainant as well as voice sample of the telephone communication between the complainant and accused person, which has been duly proved in the forensic tests thereof, the involvement of the accused person in commission of the alleged offence, would be evident with sufficient clarity. Therefore, so far as the petitioner's contentions, grievance and prayers in CRR 347 of 2023 are concerned, the State is opposing such prayers. Also that, in view of the materials available in CD, which according to the State has strongly suggested about petitioner's involvement in the alleged crime, the State has asserted that

those available materials are sufficient to attract the provisions of an offence under Section 376 IPC.

- 11.** On perusal of the FIR it appears that the complainant has come up with her allegations of sexual violation of herself by the accused person, twenty two years back, when she was of fourteen years age. The complainant has stated that the accused person being his private tutor has exploited her physically, taking advantage of her tender age and upon threat not to disclose the fact to any other person. She has elaborated in the FIR regarding her insecurity and fright of social stigma as well as retaliation from the accused person, for all these years, for which she has explained, that no complaint could have been filed by her earlier. She has stated further that at present she being a self-sufficient adult individual, has gathered the courage to stand against the accused person and thus has filed the present criminal case against him.
- 12.** In view of the facts revealed in FIR as stated above, the Court has no doubt to say that the nature of offence as alleged against the petitioner is enough serious and carrying sufficient gravity. The issue is with regard to the delay in filing the FIR by the complainant. The complainant has been a young girl of fourteen years at the time of commission of the alleged offence. She was under control of the accused person being his student and a minor child. From the FIR as well as statement of the victim available in the case diary, it appears

that the accused person, being a man of authority and control over the minor student of him, has exploited her by using his position of authority and power and control. At least, this is what has been alleged against the accused person. We are now concerned if due to delay in filing the FIR, the criminal proceeding against the accused person should be quashed or not. The reason for delay is well explained and comprehensible too.

- 13.** A minor, in any rural or suburb area, having a humble background, is often restrained with fear and sense of shame and insecurity to divulge occurrence of such an incident with her, that too by a person who is in position of authority and power and control over her. So far as Indian society is concerned, this is not a very unnatural or unknown phenomena that children are taught to see and treat their teachers, as a guardian, next to their parents. We must remember that here such an incident is being talked about, which involves a girl child of fourteen years and her teacher of matured middle age. According to the FIR, innocence has not been a bliss for the child. It has made her fall prey to the impure deviant and aberrant desires of a middle aged man. There might have been many a factor, prompting the girl to swallow the iron pill. One has been mentioned in the FIR. That is, red eyes shown by the accused person not to divulge the same, to anyone.

- 14.** The Court is inclined to test, if that is so improbable, to render the entire FIR and criminal proceedings against the petitioner, as vitiable. Delay in filing FIR, as a standalone factor, may not be sufficient for quashing a proceeding, if the allegations *prima facie* have constituted a cognizable offence and are not so severely improbable, that a prudent man's conscience would not respond to it. The perpetrator if is in a position of authority and dominance, as the accused person has been at the relevant point of time, and misuses and manipulates his superior position in an asymmetrical power dynamics, occupies dominant position relative to the victim, in this case, who has been a minor at the relevant point of time, the probability of the allegations being absurd, becomes almost negative. The rationale is always the same. Because of the nature of imbalance in the power dynamics in the relationship, in this case, that is between the minor student and her teacher, the victim would be under the perpetrators influence or authority, which means that victim cannot truly break the barriers of that influence. The Court finds, in such a situation silence of victim, is most probable and natural reaction, particularly in case, when she is a minor.
- 15.** The complainant has stated that after she has become self-sufficient and a grown up person, she could gather the courage to speak on, which is nothing unnatural but understandable qua the social structure. The complainant's statement as well as other materials

available in CD including the report of forensic test of the voice sample of the accused person, which is said to have been taken during the phone call between the two, when the accused person was expressing his sorrow and requesting to be forgiven for his alleged misdeed, cannot be over looked in this regard. Therefore the court finds that strong *prima facie* material against the accused person is available on record. That would definitely restrain this court to entertain the prayer of the petitioner in CRR 347 of 2023 to quash the criminal case against him.

16. Next question is whether such material against the accused person should have prompted the Court to frame a charge against the accused person under Section 376 of the IPC. As we know, Section 376 of the IPC is the penal provision for the offence of rape. The necessary ingredients of the offence of the rape as provided under Section 375 IPC would satisfy *prima facie* from the materials available and discussed earlier. Also that, in case of a minor, consent to any sexual act, if at all, would not bear any relevance. In such view of the fact the finding of the Court in the impugned order dated October 17, 2023, regarding availability of material only with respect to an offence under Section 354 IPC, is an erroneous one. The Court has erred in not considering the victim's minor age and nature of allegation leveled by her against the accused person.

17. On the discussion as above so far as CRR 13 of 2024 is concerned, this Court of the opinion that the petitioner's contentions and prayer therein are justify. The trial Court should incorporate a charge under Section 376 IPC in the case, and commence trial on the charges including that under Section 376 IPC.
18. On the discussion as above CRR 347 of 2023 is dismissed and CRR 13 of 2024 is allowed.
19. The learned trial Court shall proceed to alter charge by including an offence under Section 376 IPC against the accused person and commenced trial, as expeditiously as possible.
20. Both CRR 347 of 2023 and CRR 13 of 2024 are disposed of.
21. Let the CD be returned immediately.
22. The urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(RaiChattopadhyay, J.)