

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

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

CRR 181 of 2024

**Homnath Niroula @ Homnath Neroula
Vs
The State of West Bengal**

For the petitioners : Mr. Anjumchowdhury
Ms. Prathusha Dutta Chowdhury
Mr. Koushik Kumar Kanu

For the State : Mr. Aditi Shankar Chakraborty
Mr. Anirudha Biswas

Heard on : 11.07.2024

Judgment on : 06.08.2024

Ajoy Kumar Mukherjee, J.

1. This application under section 482 of the Code of Criminal Procedure (Cr.P.C.) has been preferred with a prayer for quashing G.R. case No. 257 of 2023 under section 195A/201/120B of the Indian penal Code, presently pending before learned Chief Judicial Magistrate, Kalimpong.

2. The instant case was initiated on the basis of a written complaint lodged by one Sub-inspector, of police who happens to be the investigating officer, in Kalimpong Women Police Station case no. 4 of 2020 dated

12.03.2023 under section 8 of the Protection of Children from Sexual Offences Act, 2012(in short POCSO Act, 2012)

3. It is alleged in the complaint that on 22.06.2022 the trial of the aforesaid POCSO Case No. 5 of 2020 was scheduled by the special court. On the same day, two prosecution witnesses i.e. victim girl and complainant came before the learned special court to depose but they turned hostile during examination. A group of people were loitering around the court premises. Later, on enquiry, it was revealed that said group of people were present there to pursue the case in favour of the accused. Thereafter other victim girls came to depose before the special court, who also turned hostile.

4. The present case has been initiated against the accused/petitioner herein on the basis of a secret credible information to the effect that accused has been intimidating/influencing all the prosecution witnesses by visiting their respective home and pursuing them over phone repeatedly. A requisition was sent to the SP Kalimpong for obtaining CDRS and CAFS along with authentication certificate in terms of section 65B of the Indian Evidence Act with respect to the Mobile Numbers of the accused/petitioners and Mobile numbers of the Victim girls and father of the victim girl and after collection of CDR it transpires that the accused had contacted the victim on various occasions and more so around the dates of their respective deposition in connection with the said POCSO Case. Accordingly the investigating agency found that prima facie there are sufficient reason to believe that the accused was intimidating the victims and witnesses of the case in order to get rid of the charges. It is further alleged that further deposition of witnesses were scheduled on 22.08.2023 but information

received on 14.08.2023 that the accused /petitioner has already persuaded the witness by meeting them personally and also over telephone and thereafter CDRS were collected, which buttressed the source information. It is further submitted that call records, CDR and other materials shows that the accused had personally met the witnesses and contacted them over phone to influence them to depose in his favour. It is also alleged that petitioner/accused in connivance with others destroys certain key documentary evidence of the case. It further appears that in all 13 witnesses have been examined so far and all of them turned hostile and thereafter on the basis of an order passed by a Division Bench of this Court, the case has been transferred for trial to the learned special court under POCSO Act at Darjeeling.

5. Mr. Chowdhury learned Counsel appearing on behalf of the petitioner submits that FIR lodged by the prosecution agency is not maintainable in view of statutory bar under section 195(1) (b) (i) Cr.P.C. He argued that the plea of the state that section 195 (1) (b) (i) does not apply to section 195A of the IPC, as section 195A of the IPC has been introduced later on by the amendment, is misconceived as the legislature has not specifically excluded section 195A IPC from the scope of section 195 Cr.P.C. and the legislature has not brought any change in section 195 (1) (b) (i) of Cr.P.C. and the said section has been brought by the legislature in between section 193 to section 196, so that the bar under section 195(i) (b) (i) Cr.P.C. could be made applicable to the newly introduced section. He further contended that had the legislature wanted to keep it outside the scope of the bar under section 195(1) (b) (i), it would have amended section 195(1) (b) (i) as well and

would have brought amended provision in between section 193 to 196 of IPC. In this context he relied upon ***Sumit and another Vs. State of UP and others*** (Misc. petition no. 17560 of 2023)

6. Mr. Chowdhury further contended that when there is a specific bar under the statute to take cognizance by the court then there is no utility of continuance of the criminal proceedings in such cases. Relying upon para 17 and 18 of the case of ***Saliv @ shalu @Salim Vs. State of UP and others*** reported in **2023 SCC Online SC 947** he contended that if a witness or any other person received threat and such threat are administered with an intention to cause that person to give false evidence before the court, then such witness or person can file a complaint in relation to the offence under section 195A of the IPC and it goes without saying that such complaint has to be lodged before the court recording the evidence. Section 195A of the Cr.P.C. provides a remedy of filing a complaint and the term “complaint” defines in section 2(d) of the Cr.P.C. which does not include a police report.

7. Accordingly Mr. Chowdhury submits that following the procedure for registering complaint under section 195A of the IPC read with section 195 A of the Cr.P.C. can only be made before the concerned court, wherein the false evidence was tendered and except such mode all other modes of filing a complaint including lodgement of an FIR shall be hit by the prohibition under section 195(1) (b) (i) of the Cr.P.C. He further contended that such proposition of law has also been adopted by this court in ***Md. Hussain and another Vs. the State of W.B and another*** reported in **2024 SCC Online Cal 2739** the same view also expressed by this court in ***Namita Mohanto Sarkar Vs. The state of WB*** reported in **2015 (5) CHN (cal) 480**. Relying

upon a judgment of Kerala High Court in ***Suni Vs. State of Kerala*** reported in **2023 3 KHC 57** learned counsel for the petitioner submits that the cognizance of the offence under section 195 A of IPC by the police is held to be bad in law.

8. Mr. Chowdhury in this context further argued that the ingredients to constitute offence under section 201 of IPC is also conspicuously absent in the present case. He further stated that the FIR speaks that the petitioner has destroyed certain key documentary evidence of the case without mentioning about the documents. In this context he further contended that only two witnesses who happens to be the fathers of two different victim girls were contacted by the petitioner for official reasons as one of them was the contractor of the school and another was a labour working under the said contractor in the school. The petitioner being the administrative head of the school had to contact with them for official purpose and it is not the case of the investigating officer that any of them had made complain that petitioner had threatened them or manipulated them for giving false evidence in court. But the complaint has been lodged as the complainant has 'reasoned to believe' that the petitioner contacted them to influence and induced them to depose.

9. In this context petitioner also pointed out observation of the Division Bench, while dealt with the anticipatory bail application of the petitioner in CRM (DB) No. 362 of 2023 wherein this court held that on the basis of materials placed before them they are of prima facie view that it does not establish that the petitioner has given any inducement, threat or promise to any of the victims or their parents. He further contended that 13 witnesses

have already been examined in the said POCSO case and as such it can very well be said that police had collected all material evidences which they proposed to use against the accused before the Trial Court and the documentary evidences are either in the custody of the police or it has already been marked as exhibit. So the allegation of destroying documentary evidence is absurd, specially in the absence of allegation that the petitioner has stolen the documentary evidence from the custody of the police or from the custody of court.

10. Mr. Chowdhury further submits that hostility of a witness does not empower the investigating agency to invoke either section 195A or 201 of IPC and if such illegal activities of police is allowed to continue, the same shall open pandora's Box, where if prosecution witness turns hostile in a case the police will start new criminal proceeding invoking the said sections of IPC.

11. As regards section 120B Mr. Chowdhury submits the basic requirement to invoke 120B is to have more than one accused person in a case who shall conspire together to commit an offence. A sole accused person does not fulfil the essential ingredients of invocation of section 120B as it is practically not possible to conspires singlehandedly. Mr. Chowdhury in support of his aforesaid submissions relied upon following judgments

(i) ***Teeja Devi Vs. State of Rajasthan and others*** reported in **(2014) 15 SCC 221**

(ii) ***Subrata Biswas & others Vs. State of West Bengal***, CRR **3751 of 2015**

(iii) ***John Pandian Vs. State*** reported in **(2010) 13 SCALE 13**

12. Mr. Biswas learned counsel appearing on behalf of the state submits that investigation is still under progress and during investigation the accused was interrogated and examined by investigating agency. The statements recorded under section 161 discloses names of other persons involved for disappearance of important documents. The investigating agency could not proceed further owing to stay granted by the court and the charge under section 120B would be substantiated if the investigation is allowed to progress. He further submits that the statement of the accused recorded under section 161 and supplementary charge sheet, prima facie indicates the commission of offence under section 201 of IPC. Forensic examination of mobile phone of the accused has been carried out and the report is awaited. If in such a situation the investigation is not allowed to continue invoking section 482 Cr.P.C, the investigating agency will be seriously prejudiced and if proceeding is quashed at this stage it would amount to interfering with the statutory power of the police to investigate the cognizable offence in accordance with the provisions of Cr.P.C.

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

14. On a plain reading of section 195A of Cr.P.C. it appears that the restriction imposed on procedure mentioned in section 195 Cr.P.C. is not at all applicable to causes under section 195A of the IPC. Moreover, 195A Cr.P.C. starts with the words "*any witness or any other person*" which indicate that the investigating officer who will be a witness of the case is competent to lodge the complaint. Learned counsel appearing on behalf of the petitioner heavily relied upon the judgment of the Apex Court in *Saliv @ Shalu@ Salim* case (supra). On perusal of said judgment, it appears that in

paragraph 18, the court observed that such complaint has to be lodged before the court recoding of the evidence but in the very next para i.e. in para 19 court observed “*we are conscious about the fact that Section 195A of the IPC is a cognizable offence. In a cognizable offence, police has power to investigate. We are not going into the question whether the bar of section 195 of the Cr.P.C. would apply to section 195A of the IPC as we have taken the view that none of the ingredients to constitute the offence punishable under section 195A of the IPC are disclosed in the facts of the present case.*”

15. In ***Lalita Kumari Vs. Govt. of UP*** reported in **(2014) 2 SCC 1**, supreme Court clearly held that registration of FIR under section 154 CR.P.C. is mandatory, if the information discloses commission of cognizable offence and no preliminary enquiry is permissible in such a situation.

16. So far as the contention made by the learned counsel for the petitioner that section 120B has got no application in the present context, learned Counsel for the state draws my attention at page 13 of the Case diary where the statement of the accused person has been recorded in question answer form and during investigation the name of some persons have been transpired and as such it's too early to conclude that section 120B has got no application in the present context or that the proceeding has to be quashed at its threshold.

17. Similarly, so far as allegation under section 201 of the Cr.P.C. is concerned, it appears that in the charge sheet in column No. 17 submitted in POCSO case, some specific allegation has been made contending that certain documents concerning alleged offence which were kept in the drawer, got damaged and some documents were missing and accordingly a

General Dairy being Lingseu Police Camp GDE No. 447 dated 28.02.2022 was lodged. Accordingly whether such allegation has any veracity or not can only be tested during trial and it cannot be concluded at this initial stage of the criminal proceeding that continuation of present proceeding before the court below will be abuse of the process of court.

18. Infact the case of ***Bhajanlal Vs. State of Haryana*** reported in **1992 Supp (1) SCC 335**, has laid down the basic principle governing such cases and such principles was followed in various subsequent judgments, which clearly states that the criminal proceeding can be quashed only if the allegations contained in FIR and/or the material collected during investigation does not disclose any cognizable offence or the proceeding is barred by any law. Here in the present case beside being section 195A, allegations of other offences like offence under section 201 and section 120B have been prima facie disclosed in the materials placed before me and as such I donot find that this is a fit case where following the principles laid down in ***Bhajanlal Case, (supra)***, the present proceeding can be quashed.

19. In such view of the matter **CRR 181 of 2024** stands dismissed.

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

(AJAY KUMAR MUKHERJEE, J.)