

CRR 1559 of 2022

Dr. Utpal Panja
Vs.
State of West Bengal & Anr.

Mr. Tapas Kumar Sinha
.....For the Petitioner

Mr. Sanjoy Bardhan
Mr. Mirta Derot Beggt
.....For the State

Mr. Bibaswar Bhattacharya
.....For the Opposite Party No.2

This is an application wherein petitioner has prayed for quashing the proceeding being Raiganj Police Station case no. 612 dated June 07, 2014 presently pending before the learned Chief Judicial Magistrate, Raiganj, Uttar Dinajpur.

The present petitioner is a registered medical practioner and the allegation against the present petitioner is that when the de facto complainant was admitted in the nursing home, the concerned doctor i. e. the petitioner herein in collusion with other accused persons had caused abortion and thereby on the basis of the allegation he was booked under Sections 313/314/120B of the Indian Penal Code.

After completion of investigation the Investigating Authority has submitted charge sheet against the present petitioner along with other accused persons under Sections 313/314/120B of the Indian

Penal Code.

Being aggrieved by the said proceeding the petitioner herein submits that he is a registered medical practitioner and is no way connected with the alleged offence. He further submits that from the annexure it would appear that the consent of the second wife of the husband of the complainant, namely, Suktara Bewa was taken as appearing in consent form and one Samir Md., brother-in-law of de facto complainant had also put signature therein as witness. He further submits that when the patient was brought to the hospital, he was not in a position to put her signature and as such the consent form does not bear victim's signature.

He further submits that the allegation levelled against the present petitioner does not constitute any offence against him far from offence punishable under Sections 313/314 of the Indian Penal Code nor there is any allegation against him regarding medical negligence and as such he prayed for quashing the proceeding quo against the present petitioner.

Mr. Bhattacharya, learned counsel appearing on behalf of the opposite party no.2 submits that the case is well founded after completion of investigation and as such as charge sheet has been submitted, this is not a fit case where the court is required to invoke its jurisdiction under Section 482 of the Code of Criminal Procedure.

Mr. Bardhan, learned counsel appearing on behalf of the State places the case diary and submits that during investigation police has collected sufficient materials and particularly the statement recorded during investigation clearly implicates the present

petitioner with the alleged offence. Accordingly, the truth will reveal only after trial.

He further submits that in respect of other accused persons the proclamation of attachment has already been issued by the court below as they are avoiding the court process and so far as the present petitioner is concerned, the proceeding has reached at the evidenced stage. Accordingly, it is not a fit case for quashing.

I have considered the submissions made on behalf of the respective parties.

One of the essential ingredients to constitute offence under Section 313 is that accused caused miscarriage without the woman's consent as defined in Section 90 of I.P.C.

The present petitioner has also been charge sheeted under Section 3 of the Medical Termination of Pregnancy Act, 1971 which states that no pregnancy shall be terminated except with the consent of the pregnant woman, unless the woman is below the age of 18 years or is suffering from mental illness. Here in the present case from the case diary it appears that the concerned consent form does not bear the signature of the victim. There is apparently nothing to show that the victim is suffering from mental illness or that she was not in a position to give consent. Now whether the act was done or intended to be done in good faith or there was any implied consent under Section 90 of I.P.C. or not can only be decided during trial.

The other materials in the case diary including the statements recorded under Sections 161 of the Code of Criminal Procedure and Section 164 of the Code of Criminal Procedure prima

facie makes out a case against all the petitioners.

It is now well settled that exercise of power under Section 482 of Cr. P. C. to quash a criminal proceeding is only when an allegation made in the FIR and/or the materials collected during investigation does not constitute the ingredients of the offences alleged. Therefore, interference by the High Court under Section 482 of Cr. P. C. is to prevent the abuse of process of any court or otherwise to secure the ends of justice.

High Court is not supposed to transgress the limits of its jurisdiction under Section 482 of Cr. P. C. by enquiring into the merits of the allegation. The fact that victim was not a signatory to the consent form is apparent. At this stage High Court ought not to be scrutinizing the material in the manner to ascertain bona fideness of the doctor or victim's alleged inability to put signature therein, in the manner in which the trial court would do in the course of the criminal trial after evidence is adduced.

Moreover, charge sheet has already been submitted in the present case and as such petitioner always has the remedy to pray for discharge before the court below, if the materials on the basis of which charge sheet has been submitted against the petitioner can be said to insufficient to frame a charge. But by no means this court would be justified in quashing the proceeding quo the petitioner by appreciating the materials collected during investigation.

In such view of the matter, CRR 1559 of 2022 is dismissed.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, after completion of all necessary

formalities.

(Dr. Ajoy Kumar Mukherjee, J.)