

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 3202 of 2019

Bhuban Basak

Vs

The State of West Bengal & Ors.

For the Petitioner : Mr. Musharaf Alam Sk.

For the State : Ms. Sujata Das.

For the Opposite Party No. 2 : None.

Heard on : 20.02.2023

Judgment on : 16.03.2023

Shampa Dutt (Paul), J.:

The present revision has been preferred praying for quashing of the proceedings in connection with Manikchak Police Station Case No. 17 of 2016 dated 13.01.2016 under Sections 448/493/376 of the Indian Penal Code read with Section 4/8 of POCSO Act in G.R. Case No. 163/2016 which is registered as POCSO Case No. 13/2016, pending before the Learned Judge Special Court, 2nd Court, Malda, i.e. Additional District & Sessions Judge 2nd Court, Malda.

The petitioner's case is that a complaint was lodged by one Atul Basak of Madhabpur with Manikchak Police Station on 13.01.2016 against accused Bhuban Basak aged about 22 years to the effect that since 5/6 months with the assurance of marriage with his daughter Fultushi Basak, love affairs developed between the accused and his daughter and both visited many places. It is alleged that on 11.01.2016 in the morning about 11.00 a.m. when complainant and his wife were not in the house being engaged in day labour work, the accused entered the house and forcibly raped his daughter. He also put sindur on her head saying they were married. When his daughter raised alarm, the accused fled away. After knowing about the incident from his daughter, a complaint was lodged with Manikchak Police Station under Section 448/493/376 of the Indian Penal Code read with Section 4/8 of POCSO Act.

After completion of Investigation, Police submitted Charge sheet vide No. 68/2019 dated 16.02.2019 under Sections 448/493/376 of the Indian Penal Code read with Section 4/8 of POCSO Act.

The victim is aged about 14 years and there allegedly was a love affair with the petitioner and as such both the parties visited different places, which was within the knowledge of the complainant who is the father of the victim. As per Charge Sheet it is evident victim was medically examined in which R.M.O. Dr. Mita Halder of Malda Medical College and Hospital, Malda opined “there is no marks of injury detected in her private parts. Hymen ruptured. No Foreign body detected in her vagina.”

It is submitted that hymen may be ruptured for various reasons but there is no ingredients of Section 376 of the Indian Penal Code.

The date of birth of the Victim, Fultusi Basak is 03.05.2001. Her marriage has been solemnized on 12.06.2018 with one Pappu Das son of Sri Laxman Das.

That as per Medical Report there is no marks of injury in her Private Parts. That more over as per complaint/F.I.R both parties had love affairs only. That this case has been started falsely having grudge against the petitioner.

The petitioner is a day labour and he is now a married person having married another woman. On the other hand the victim also is now a married lady (not with the petitioner).

In the present situation proceedings of this case is required to be set aside.

Mr. Mushraf Alam Sk., learned counsel for the petitioner has submitted that the petitioner is in no way connected with the alleged commission of offence. If the proceedings of this case is allowed to continue. It will be miscarriage of justice.

In spite of due service there is no representation on behalf of the opposite party.

Ms. Sujata Das, learned counsel for the State has placed the case diary.

On hearing the learned counsel for the petitioner and considering the materials on record and the case diary. The following facts are before the court:-

- 1) The date of birth of the victim is 03.05.2001.
- 2) Alleged marriage with another person took place on 12.06.2018.
- 3) Victim is married to one Pappu Das.
- 4) The petitioner is also married to another person.

- 5) Medical report shows that though there is no marks of injury detected in her private parts, Hymen ruptured.
- 6) The alleged incident of rape by the petitioner took place on 11.01.2016.
- 7) Victim was clearly a minor aged about 15 years.

The fact of them being married to other persons does not lessen the offence alleged, considering the prima facie materials on record.

Thus from the materials on record including the medical report, age of the victim and the statements on record as discussed there appears to be a prima facie case against the petitioner of committing a cognizable offence and quashing the proceedings at the stage would amount to an abuse of the process of law/court.

The materials on record are sufficient for the case to proceed towards trial.

CRR 3202 of 2019 is thus dismissed.

There will be no order as to costs.

All connected Application stand disposed of.

Interim order if any stands vacated.

Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)