
Anwarul Haque Vs The State of West Bengal and Another

CRR No. 886 of 2009

Court: Calcutta High Court

Date of Decision: Aug. 9, 2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 156(3), 203, 401, 482#Penal Code, 1860 (IPC) â€” Section 376, 376(2)

Hon'ble Judges: Kalidas Mukherjee, J

Bench: Single Bench

Advocate: None, for the Appellant; Krishna Ghosh and Kalyan Ghosh, for the Respondent

Final Decision: Dismissed

Judgement

Kalidas Mukherjee, J.

This is an application u/s 401 and 482 of the Code of Criminal Procedure praying for setting aside the order dated

18.2.2009 passed by learned Additional Sessions Judge, Malda in Sessions Trial No. 15 of 2009 corresponding to Sessions Case No. 23 of

2009 arising out of Harishchandrapur P.S. case No. 143 of 2005 u/s 376 of the Indian Penal Code.

2. The prosecution case, in short, is that the victim filed a complaint before the learned Chief Judicial Magistrate, Malda which was sent to the P.S.

u/s 156(3) of the Cr.P.C. It has been alleged that on 23.4.2005 the petitioner and another, namely, Abdul Mannan alias Pannan committed rape

upon her near Tulsihata Bora Bridge and thereafter dropped her near Old Talli Bhata of Kapaichandi Village. The learned Magistrate upon perusal

of the complaint was pleased to transfer the case to the learned Sub-divisional Judicial Magistrate, Malda for enquiry and trial. Subsequently, on

02.8.2005 the complainant filed an application praying for withdrawal of complaint on the ground that she was unable to produce witnesses to

substantiate the allegation and, as such, prayed for withdrawal of the complaint with liberty to file a fresh complaint and for sending the same to the

P.S. for investigation.

3. Upon consideration of the said application, the learned Magistrate vide Order dated 02.8.2005 dismissed the said complaint u/s 203 Cr.P.C.

with liberty to file a fresh complaint for investigation u/s 156(3) Cr.P.C. Pursuant to the liberty given to the complainant, the complaint being No.

1050C/2005 was filed on 5.8.2005 against the accused/petitioner and Abdul Mannan before the learned Magistrate on the self-same facts and the

learned Magistrate directed the O.C. of Harishchandrapur P.S. to investigate the matter u/s 156(3) Cr.P.C. Accordingly, the O.C.

Harishchandrapur P.S. Case No. 143 of 2005 dated 15.8.2005 was started against the accused/petitioner and Abdul Mannan u/s 376 I.P.C.

Being aggrieved by the said order, passed by the learned Magistrate the petitioner filed criminal revision bearing No. 43 of 2005 before the

learned Sessions Judge, Malda. The learned Sessions Judge vide Order dated 24.8.2005 dismissed the said Revisional Application.

4. It is the contention of the petitioner as made in the instant Revisional Application that he has been falsely implicated in this Criminal Case at the

instance of some interested persons. Moreover, the learned CJM had no jurisdiction to give liberty to the complainant to file fresh complaint after

the withdrawal of the earlier complaint. It is contended that the learned Sessions Judge erred in-law in not considering the Revisional Application

on merits. The petitioners contended in the application that the initiation of the Harishchandrapur P.S. case No. 143 of 2005 was thoroughly illegal

and was abuse of the process of the Court. The petitioner preferred an application bearing CRR No. 2641 of 2005 praying for quashing of the

order dated 02.8.2005 passed by learned CJM, Malda in complaint case No. 667C of 2005 and also the order dated 24.8.2005 passed by

learned Sessions Judge, Malda in Criminal Revision No. 43 of 2005. The Revisional Application was contested by the O.P. No. 2 herein as well

as the State. After considering the materials on record the Hon"ble Court was pleased to dismiss the Revisional Application by order dated

29.8.2006. Thereafter, by Order dated 18.2.2009 passed by the learned Additional Sessions Judge in Sessions Trial No. 15 of 2009, charge was

framed u/s 376(2)(g) I.P.C. against the present petitioner along with other co-accused. It is the contention of the petitioner that he is not in any way

connected with the case and the allegations have been raised falsely due to personal and private grudge. It is contended in the application that there

is no medical report against the commission of the alleged offence.

5. None appeared on behalf of the petitioner. Learned Counsel appearing for the O.P./State submits that earlier a Revisional Application was filed

before the Hon"ble Court which was rejected. It is submitted that subsequently charge was framed by the learned Trial Court and a schedule was

fixed for examination of the witnesses and at this stage there is no ground for quashing of the proceedings or setting aside the impugned order.

6. It appears that earlier a Revisional Application was filed bearing No. CRR 2641 of 2005 which was dismissed. In the said Revisional

Application the order of dismissal of the complaint u/s 203 Cr.P.C. was challenged. The prayer for quashing was dismissed. The learned Trial

Judge, thereafter, upon perusal of the materials on record was of the view that there were reasons to presume that the accused persons committed

offence punishable u/s 376(2)(g) I.P.C. Accordingly, the learned Judge framed the charge against the accused persons and fixed a schedule for the

examination of the witnesses.

7. Considering the fact that the earlier Revisional Application for quashing of the proceedings was dismissed and the learned Magistrate after

perusal of the materials on record framed charge and fixed a schedule for examination of witnesses, I am of the considered view that there is no

ground to set aside the order impugned. There is no merit in this Revisional Application and the same stands dismissed. Interim order, if any, stands

vacated.

8. Let a copy of this order be sent to the learned Court below immediately.

9. Urgent Photostat certified copy, if applied for, be handed over to the parties as early as possible.