(2014) 01 CAL CK 0087

Calcutta High Court

Case No: C.R.R. 2557 of 2013

In Re: Mungali Thandar — APPELLANT

Vs

RESPONDENT

Date of Decision: Jan. 9, 2014

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 164 309(1)
- Penal Code, 1860 (IPC) - Section 376(2)(C)(H) 511
- Protection of Children from Sexual Offences Act, 2012 - Section 10 7 8 9(n)

Hon'ble Judges: Joymalya Bagchi, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Joymalya Bagchi, J.
No one appears by either of the parties, when the matter is called on. It appears that the petition has been filed by Mungali Thandar, wife of the sole accused Joydeb Thandar praying for quashing of the proceeding. The petitioner, Mungali Thandar, is not an accused in the instant case.

2. I am, therefore, of the view that the petitioner does not have requisite locus standi to pray for quashing on behalf of the accused Joydeb Thandar.

3. Be that as it may, prayer has been made for quashing the Sessions Case No. 75 of 2013 pending before the learned Additional Sessions Judge, Second Court at Burdwan arising out of Bhatar Police Station Case No. 92/2013 dated 28th March, 2013 under Sections 376(2)(C)(H)/511 of the Indian Penal Code and under Sections 7/8/9(n)/10 of the Protection of Children from Sexual Offence Act, 2012.

4. The prosecution case against the husband of petitioner is to the effect that the victim, who is aged about 12 years, complained to her mother, the de facto complainant, that on

28th March, 2013, the accused being the husband of the petitioner had came to house and tried to rape her. She also narrated that even on 24th March, 2013, the accused had attempted to rape the victim.

5. On the basis of her complaint, first information report was registered. In course of investigation, the statement of the victim girl was recorded u/s 164 of the Code of Criminal Procedure. The investigation was concluded in filing of a charge-sheet. The matter has been committed to the Court of sessions.

6. At this stage, the proceeding has been challenged, inter alia, on the ground that the allegations are out and out false and mala fide in nature.

7. It has been pleaded that there is discrepancy in the version of the victim girl recorded u/s 164 of the Code of Criminal Procedure than what is transpiring from the first information report. It has also been pleaded that there is delay in lodging the first information report and there is confusion as to the dates of the alleged incident.

8. I have examined the impugned charge-sheet, which, prima facie, discloses allegations of attempt to ravish the minor girl by the husband of the petitioner. Truthfulness or otherwise of such allegation can only be tested at a more mature stage of the proceeding. However, jurisdiction of the Court to take cognizance of the alleged offences and commit the same for consideration of charge cannot be called into question on the basis of the issues as canvassed in the petition. The said issues are factual in nature and require to be raised before the learned trial Judge at the appropriate stage of the proceeding.

9. I therefore dispose of the revisional application by giving liberty to the accused to raise the issues canvassed herein at the appropriate stage of the proceeding in accordance with law.

10. Needless to mention, a proceeding relating to sexual assault upon a minor child requires to be expeditiously dealt with and the learned trial Judge shall proceed with the case keeping in mind the mandate incorporated in the proviso to Section 309(1) of the Code of Criminal Procedure. The revisional application is, accordingly, dismissed.