IN THE HIGH COURT AT CALCUTTA

CRIMINAL MISCELLANEOUS JURISDICTION

APPELLATE SIDE

CRR 2431 of 2024
Court On Its Own Motion
Vs.
XXXX(Victim Girl) & Anr.
In
CRM (DB) 1564 of 2024
Rajbul Sk @ Rajibul Molla @ Raju Sk. and Ors.
Vs.
The State of West Bengal & Anr.

Before: The Hon'ble Justice Arijit Banerjee

&

The Hon'ble Justice Apurba Sinha Ray

For the Petitioners in CRM (DB) 1564 of 2024	:	Mr. Sabir Ahmed, Adv. Mr. Somnath Adhikary, Adv.
For the de facto complainant	:	Mr. Soumyajit Das Mahapatra,
For the State.	:	Mr. Arindam Sen, Adv. Mr. Shiladitya Banerjee, Adv.
For Orders On:		24.09.2024

Apurba Sinha Ray, J. :-

1. The accused namely, Rajbul Sk @ Rajibul Molla @ Raju Sk., Makarul Sk. @ Makkaul Sk @ Makkaru Sk and Asadul Sk were charged for committing rape upon the alleged minor daughter of the defacto-complainant and were arrested in connection with Berhampore Police Station Case No. 1114 of 2023 dated 09.08.2023 under Sections 341/376D of the Indian Penal Code, 1860 and also under Sections 4/6 of Protection of Child from Sexual Offences Act (POSCO Act, 2012). They were languishing in judicial custody for almost one year. Astonishingly, during the hearing of the bail application under Section 439 of Cr.P.C. before this Court on 13.06.2024 the defacto-complainant, the mother of the victim girl, submitted through her learned counsel that she lodged complaint against the petitioners on false allegations of rape upon her daughter and at the time of recording statements under Section 164 Cr.P.C., her daughter falsely implicated the petitioners under political pressure.

2. After taking into consideration the contention of the defacto-complainant made through her learned counsel Mr. Soumyajit Das Mahapatra, we found that the issue regarding false implication of the petitioners under political pressure was very serious and this court, while granting bail to the petitioners, issued suo motu Rule calling

upon the alleged minor daughter and the defacto-complainant to show cause as to why necessary legal proceeding shall not be initiated against them for having made false complaint and also having recorded false statements on oath before the Learned Magistrate under Section 164 Cr.P.C.

3. The defacto-complainant filed her response to the Rule wherein she tendered unconditional apology for whatever was done by her and her minor daughter. She has specifically stated that she was compelled to make and pursue the false complaint due to tremendous pressure of the local political leaders. She has further stated that her husband is an ailing person who fell from an under construction building while working as a mason and he is bedridden with a broken spinal cord since 2017.

4. According to her, they have very limited sources of income and they have to depend largely on different grants sponsored by the State Government under various social schemes. Moreover, as her husband is bedridden she and the victim girl are heavily dependent upon the neighbours and local politically connected persons to maintain their livelihood and the regular medical cost of her ailing husband.

5. It is also stated by the defacto-complainant that at the end of July, 2023 some of the local political leaders approached her for making up a false story which culminated in the present criminal case against the present petitioners as they have switched their allegiance from the ruling party to the opposition party and the said persons who approached them also stated that if she agrees to their proposal the defacto-complainant and her family members will be further included in many other social schemes where from they would get more grants.

6. At first, she did not agree but subsequently under mounting pressure and repeated persuasions she realized that she had no option but to succumb to their diktat. Finding no other alternative she lodged the present complaint on 08.08.2023 and her daughter recorded her statement before the Learned Chief Judicial Magistrate, Berhampore, Murshidabad on 17.08.2023. After the Parliamentary Election, 2024 was over the defacto-complainant realized that the said political persons are not at all interested about the outcome of the case any further as they have reaped their political benefit.

7. Accordingly, the defacto-complainant thought it prudent to disclose the actual fact before this Court through her learned counsel. She is ready to record her statement under Section 164 Cr.P.C. once

again stating whatever has been stated in her response to the Rule issued by this Court.

8. Learned Counsel for the prosecution, on the other hand has submitted that there are important judgments of the Hon'ble Supreme Court and other High Courts wherein giving false evidence in judicial proceedings has been strongly deprecated. In this regard he has cited decisions reported in **AIR 2000 SC 168 M.S. Ahlawat Vs. State of Haryana and Anr.,** unreported decisions in the cases **of Mutthu Karuppan Vs. ParitiIlamvazhuti & Anr.** And **Mukesh Tiwari Vs. State of UP (2016).**

9. The above submission of the defacto-complainant reveals that the protective umbrella created for the protection of child victims under POCSO Act, 2012 is being misused by people like the defacto-complainant and the victim. The seriousness of the issue will be further unfolded if we peruse the bail application filed by the three petitioners in connection with CRR No. 2431 of 2024 wherein the said petitioners alleged that the victim is not a minor and she is a married lady and she had contracted at least two marriages. She got divorced by her said two husbands. In this regard, they have submitted two talaknamas showing dissolution of marriages of the victim at the

instance of her two husbands on 06.09.2022 and 03.03.2023 respectively. Therefore, the above factual aspect prima facie shows that Berhampore Police Station Case No. 1114 of 2023 dated 09.08.2023 was thus initiated on the basis of false allegations and further there is a genuine doubt regarding the minority of the alleged victim.

10. It is true that minor victims have been protected by Section 22(2) of the POCSO Act, 2012 even if they make false allegations. But, if a victim misleads the authority regarding her age and persuades the authority to take legal action against an innocent person by claiming that she is a minor, we think that the benefit of the provisions as envisaged under Section 22(2) of POCSO Act, 2012 is not available to such victim who is not a minor at the time of lodging false complaint.

11. Admittedly, the defacto-complainant and her daughter lodged the false complaint and according to them, they did so due to their abject poverty. Can one's poverty be a good ground for making false allegations against an innocent person? The learned counsel of the defacto-complainant has relied upon one article namely "A Tea Selller And A Judge" by Apoorva Mandhani published in Live law on 13.11.2018 (accessed on 15.07.2024) wherein a minor tea seller who used to hawk in trains and railway stations was booked under the

relevant provisions of Indian Railway Act, 1989 and the concerned Magistrate acquitted the said young person who was compelled to violate the provisions of Indian Railway Act, 1989 due to his abject poverty. But such a case cannot be equated with the present case since no innocent person was booked under criminal laws on the basis of activities of the young tea seller. He violated the provisions of law due to his poverty. But, we must reiterate that poverty cannot be a ground for lodging false complaints against innocent persons. The contention of the defacto-complainant as such does not impress us. We find that the defacto-complainant and her daughter, prima facie, appear to have fabricated false evidence under Section 192 of the Indian Penal Code, 1860 at the relevant point of time which is now Section 228 of the Bharatiya Nyaya Sanhita, 2023.

12. Section 192 of IPC is quoted herein below:-

> "*Fabricating false evidence.—Whoever causes any circumstance to exist or makes any false entry in any book or record, or electronic record or makes any document or electronic record containing a false statement, intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false*

> *entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said "to fabricate false evidence".*"

13. However, we are alive to the fact that we were hearing the bail application of the accused persons under Section 439 of Cr.P.C. For the purpose of preventing sanctity of the legal procedure being marred at the hands of unscrupulous persons, after conclusion of the trial, the allegations against defacto-complainant for fabricating false evidence with the help of her daughter are to be enquired into by the concerned Learned Special Judge under POCSO Act, 2012 at Berhampore, Murshidabad wherein the Berhampore Police Station Case No. 1114 of 2023 dated 09.08.2023 is pending since the said court is to deal with terminal proceeding. In other words, the relevant case will be concluded/terminated in the said court and not before this High Court. As there is allegation that the victim and her mother concealed the victim's actual age at the time of making false complaint, the actual age of the victim at the time of lodging false complaint should also be ascertained by the concerned Learned Special Judge who is supposed to deal with the enquiry under Section 340 of Cr.P.C. (**379**

BNSS) and if it appears that the victim was major at the time of lodging false complaint and recording of her statement under Section 164 of Cr.P.C., appropriate action should also be taken against the victim without hesitation. In other words, in that event, the benefit of Section 22(2) of POCSO Act, 2012 will not be available to the said victim, being the daughter of the defacto-complainant.

14. Accordingly, we direct the Learned Judge, Special POSCO Court, Berhampore, Murshidabad to make a discreet enquiry (at the time of conclusion of the trial) in respect of the act of the defacto-complainant and her daughter in making false complaint and also recording of false statement under Section 164 of Cr.P.C. and thereby fabricating false evidence within the meaning of Section 192 of the IPC. As a result of such an act, three innocent persons being the petitioners herein, have spent almost one year behind the bar, and this fact, therefore, should also be taken into account by the Learned Judge. After enquiry, if the Learned Judge, Special POCSO Court, Berhampore, Murshidabad, finds that the defacto-complainant and/or her daughter (if major) are responsible for fabrication of false evidence under Section 192 of Indian Penal Code, 1860, he shall forthwith lodge a complaint before the Competent Court of Magistrate against the defacto-complainant and/or her daughter (if she was major at the time of recording her

statement) under Section 340 Cr.P.C. (Section 379 BNSS) for initiating a criminal proceeding against them.

15. Let a copy of this order along with a copy of the order dated 13.06.2024 of this court, copy of the show cause dated 13.06.2024, the bail application along with annexure in connection with CRR No. 2431 of 2024 be sent to the Learned Judge, Special POCSO Court, Berhampore, Murshidabad for taking appropriate action. The learned Registrar General is requested to communicate this order to the Learned Judge, Special POCSO Court, Berhampore, Murshidabad immediately. Rule issued is disposed of.

16. Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

I Agree.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)