
(2019) 08 CAL CK 0111

In the Calcutta High Court

Case No : Criminal Revision (CRR) No. 2337 Of 2018

Dr. Subrata Nag

APPELLANT

Vs

State Of West Bengal & Anr

RESPONDENT

Date of Decision : 02-08-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 164, 482
Indian Penal Code, 1860 — Section 302, 304B, 354

Citation : (2019) 08 CAL CK 0111

Hon'ble Judges : Suvra Ghosh, J

Bench : Single Bench

Advocate : Rajdeep Mazumdar, Moyukh Mukherjee, Pritam Roy, Kriti Mehrotra, A.K. Adhya, Sayanti Santra

Final Decision : Dismissed

Judgement

Suvra Ghosh, J

1) The petitioner who is a medical practitioner at Mahesh Bhattacharjee Homeopathic Medical College & Hospital prays for quashing of the Charge-Sheet and the entire proceedings in connection with Howrah Women Police Station Case No. 28/2017 dated 07.06.2017.

2) The petitioner is a man of repute and is a doctor by profession. The complainant/opposite party no. 2 who is a student of the said college alleged that on 06.06.2017 when she along with her classmate Ayan Mondal went to the room of the petitioner for getting some papers signed by him, the petitioner sent Ayan Mondal to purchase some snacks and molested the opposite party when she was alone in the room.

3) Learned advocate for the petitioner states that the complaint has been lodged against the petitioner with the malafide intention and there is no substance in the complaint which may lead to a prosecution under Section 354 of the Penal Code. No enquiry was held by the investigating officer regarding the hours of

closing of the college and the allegations made out against the petitioner are not only improbable, but also absurd. The only other witness upon whose statement the opposite party has banked was not present during the alleged incident and heard about the same from the opposite party.

4) The State has referred to the statements of the opposite party as well as her classmate Ayan Mondal under Section 164 of the Code and has opposed the prayer.

5) Opposite party no. 2 draws the attention of the Court to the charge-sheet and submits that a prima facie case has been made out against the petitioner. The petitioner being a teacher has allegedly molested his student and the case is essentially based on disputed questions of fact.

6) Learned advocate has referred to the authority in Paresh Ghorai and others v/ s. State of West Bengal reported in (2015) 2 C Cr LR (Cal) 121 in support of his contention.

7) It appears that the petitioner is a medical practitioner at Mahesh Bhattacharjee Homeopathic Medical College & Hospital and opposite party no. 2 is a medical student therein. The allegations made in the complaint by the opposite party were corroborated by her in her statement under Section 164 of the Code recorded the day after lodging the complaint. Charge-sheet has been submitted in this case against the petitioner under Section 354 of the Penal Code. During investigation, the investigating officer examined several witnesses besides the complainant, her parents and Ayan Mondal and a prima facie case under Section 354 of the Penal Code appears to have been made out against the petitioner in course of investigation, which prima facie corroborates the version of the complaint.

8) It is trite law that jurisdiction under Section 482 of the Code ought to be exercised with extreme care, caution and circumspection and should not be used to stifle or axe down a legitimate prosecution. The test is whether the uncontroverted allegations as made out in the complaint prima facie establish the case and also whether allowing the case to continue shall amount to abuse of the process of law.

9) In the present case, the complaint as well as the investigation make out a prima facie case against the petitioner and the allegations involve disputed questions of fact which can be considered and assessed only in course of trial. Charge-sheet has been submitted against the petitioner under Section 354 of the Penal Code and it shall not be just or proper for the court to interdict the prosecution in the given facts and circumstances of the case. There is also no prima facie material to suggest any previous discord or hostility between the petitioner and the second opposite party which may have led to lodging of a false complaint with a view to harass and humiliate the petitioner. The case is ready for trial and the court should weigh the evidence on record in order to come to a conclusion as to whether the allegations made out against the petitioner has

been substantiated beyond all reasonable doubt.

10) It is pertinent to mention here that the authority relied upon by opposite party no. 2 deals with an order framing charge against the accused person under Section 302 of the Penal Code and alternatively under Section 304B of the Penal Code and the High Court held that such framing of charge did not cause prejudice to the petitioner. The factual scenario of the present case can be distinguished from the ratio of the said judgment.

11) In the premise, quashing of the entire proceedings against the petitioner in the present case is not called for as the disputed questions of fact involved herein can be determined only in course of trial.

12) Accordingly, CRR 2337 of 2018 is dismissed.

13) There will be no order as to costs.

14) Case diary be returned.

15) Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.