

(2009) 09 CAL CK 0066
In the Calcutta High Court
Case No : C.R.R. No. 1807 of 2009

Partho Pal Chowdhury and Another	Vs	APPELLANT
The State of West Bengal and Another		RESPONDENT

Date of Decision : 02-09-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 227
Penal Code, 1860 (IPC) — Section 120B, 366A, 368, 372

Citation : (2009) 09 CAL CK 0066

Hon'ble Judges : Ashim Kumar Roy, J

Bench : Single Bench

Advocate : Sekhar Basu, Sauvik Mitter and Partha Sarathi Baksi, for the Appellant; Joy Sengupta, for the Respondent

Judgement

Ashim Kumar Roy, J.—In connection with a Sessions Trial in which the petitioners have been arraigned as accused moved an application for discharge u/s 227 of the Code of Criminal Procedure. But the Learned Court below rejected their such prayer for discharge and framed charge under Sections 366A/368/372/120B of the Indian Penal Code against the petitioners.

In this criminal revision petitioners challenged both the orders of the Sessions Court rejecting their prayer for discharge as well as the order of framing charge.

2. Mr. Sekhar Basu, the learned advocate appearing on behalf of the petitioners in support of this application vehemently urged that there was no justification for rejecting the petitioners' prayer for discharge and in framing charge. According to him there was no materials to support the decision of the trial court. He raised the following points in support of this application for quashing of the charge;

(a) The statement of the victim girl recorded u/s 164 of the Code clearly indicates that the present petitioners have played no role in her leaving the lawful custody of her guardian and the victim girl on her own volition deserted her parents i.e. her lawful guardian.

(b) The materials collected by the police during investigation clearly shows that victim girl was never forced to leave Kolkata and go to Hyderabad by the petitioners at any point of time and she left her on wishes.

(c) The order impugned were passed mechanically.

(d) The factual scenario as depicted in the case clearly portrays a picture which runs contrary to the basic ingredients of an offence punishable u/s 368 of the Indian Penal Code.

(e) The victim girl had neither been kidnapped nor been abducted at any point of time and in fact she on her own volition left for Hyderabad to pursue a musical carrier.

(f) There is no materials on record which can be translated into legally admissible evidence to show that the present petitioners had induced the victim girl in any manner so as to force her or seduce her into illicit intercourse with another person.

(g) The statement of the victim girl recorded u/s 164 of the Code of Criminal Procedure completely demolished the prosecution case.

(h) The charge-sheet materials do not disclose commission of any offence far less any offence punishable under Sections 366A/368/372/120B of the Indian Penal Code for which charge has been framed.

On the other hand, Mr. Joy Sengupta, the Learned Counsel appearing on behalf of the State at the very outset submitted that earlier the present petitioners moved another criminal revision, C.R.R. No. 49 of 2005 before this Hon''ble Court against the order of taking of cognizance and for quashing of the charge-sheet relating to the self-same offences for which charge has been framed. According to him the instant criminal revision entirely rests on identical grounds on which the earlier application for quashing was moved before this Court. Mr. Sengupta further submitted however this Hon''ble Court dismissed the said criminal revision and rejected the petitioners prayer for quashing on a specific finding that a prima facie case has been made out justifying submissions of the charge-sheet. Mr. Sengupta then submitted the petitioners against the order of this Hon''ble Court moved a SLP before the Hon''ble Supreme Court but the Hon''ble Supreme Court summarily dismissed the said SLP without interfering with the findings of this Hon''ble High Court. Mr. Sengupta now vehemently urged in view of the order passed by this Court and then by the Hon''ble Apex Court the Learned Trial Court was fully justified in framing charge.

3. I have given my anxious consideration to the rival submissions of the parties and perused the materials on record. I have also perused the Judgement of this Hon''ble High Court in connection with C.R.R. No. 49 of 2005, which was earlier moved by the present petitioner before this Court seeking quashing of the charge-sheet and order of taking cognizance, produced at the time of hearing of this application as well as the Judgement of the Hon''ble Supreme Court annexed

with this criminal revision.

4. Thus, it appears the present petitioners earlier moved C.R.R. No. 49 of 2005 before this Hon"ble Court, for quashing of the charge-sheet relating to the self-same offences for which now charge has been framed against them. In the instant criminal revision the petitioners are seeking for quashing of the charge on the identical grounds on which they sought for quashing of the charge-sheet, viz. on the grounds, commission of cognizable offences has not been made out on the evidentiary materials collected by the police during investigation and the statement of the victim recorded u/s 164 of the Code of Criminal Procedure ruled out the complicity of the petitioners in the alleged offences. However, this Hon"ble Court dismissed the said criminal revision on the following findings;

Upon hearing the learned advocates for the parties, I find that through in the statement of the victim u/s 164 of the Cr. P.C. the victim has not brought any allegations against the two petitioners there are materials through statements of the other witnesses including that of the victim that the victim came to the house of the petitioner No. 1 and where she was alleged sexually tortured by the petitioner No. 1 and then she was given a cash of Rs. 4,000/- and by requisitioning a taxi she was sent to Indra of Konnagore wherefrom she was sent to Secunderabad. Whether the allegations are true or false does not call for consideration by this Court. Admittedly, the victim was minor and materials disclosed that she got Rs. 4,000/-from petitioner No. 1 at his house wherefrom after receiving the money she with the help of Indra came to Secunderabad. In the circumstances it is not permissible for this Court to quash a proceeding.

The said order of dismissal was challenged in a SLP before the Hon"ble Supreme Court and the Apex Court dismissed the said SLP summarily.

5. It is true that the Hon"ble Supreme Court while dismissing the SLP gave liberty to the petitioners to file appropriate application at the time of framing of charge. It is equally true that this Court while dismissing the criminal revision granted liberty to the petitioners to agitate the points taken in the said criminal revision at the appropriate stage of the trial. But, on the face of the findings of this Court that there are sufficient prima facie materials disclosing commission of the offences for which charge-sheet has been submitted and now charge has been framed and more particularly when interference with such findings of this Court has been declined and refused by the Apex Court, the Trial Court has no option to reconsider the charge-sheet materials and conceded to the petitioners prayer for discharge holding that no case has been made out, i.e., taking a view contrary to the view taken by this Hon"ble High Court and affirmed by the Hon"ble Supreme Court. I do not find any wrong in the impugned order. Apart from that having gone through the charge-sheet materials available from the Case Diary I am of the opinion it cannot be said that no case for which charge has been framed against the petitioners has been made out.

This criminal revision has no merit and accordingly stands dismissed.

Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.