

(2013) 10 CAL CK 0014
In the Calcutta High Court

Case No : C.R.R. No. 839 of 2012 and C.R.A.N. No. 1026 of 2013

Sri Ashok Roy @ Ashok Kumar Roy

APPELLANT

Vs

The State of West Bengal and Another

RESPONDENT

Date of Decision : 08-10-2013

Acts Referred:

Citation : (2013) 10 CAL CK 0014

Hon'ble Judges : Asim Kumar Mondal, J

Bench : Single Bench

Advocate : Sanat Chowdhury, for the Appellant; Rudradipta Nandy for the State, Mr. Sabyasachi Banerjee and Ms. Sayanti Chakrabarty for the opposite party No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Asim Kumar Mondal, J.—This is an application u/s 401, 482 of the Code of Criminal Procedure praying for quashing the criminal proceedings being Ghola Police Station Case No. 66 of 2011 dated February 22, 2011 u/s 493, 376, 420 of the Indian Penal Code in which on September 20, 2011 learned Additional Chief Judicial Magistrate at Barrackpore, North 24 Parganas was pleased to take cognizance of the offence being G.R. Case No. 698 of 2011. The case of the petitioner in short is that the respondent lodged one complaint against the petitioner which was registered as Ghola P.S. Case No. 66 of 2011 dated February 22nd, 2011 u/s 493 /376 /420 of the Indian Penal Code. The respondent alleged that she is a school teacher. Affairs developed in between her and the present petitioner since 2008. The petitioner promised and assured to marry the respondent and taking the advantage of said relationship as well as the weakness of the respondent, the petitioner developed physical relationship with the lady. It is further alleged that on the plea of said promise of marry the petitioner time to time took money from the respondent and finally as and when the marriage of the respondent was settled with some other person but respondent refused the said proposal of marriage with a hope that the petitioner

would marry her. The petitioner on the contrary refused to marry her and threatened her with a dare consequences, if the respondent disclosed the matter and relationship to anybody else.

2. On the said complaint police registered G.R.P.S. Case No. 66 of 2011 dated 22nd February, 2011 and investigated into the matter. During investigation police examined some witnesses and also recorded the statement of the victim lady u/s 164 of Criminal Procedure Code.

3. On conclusion of the investigation police submitted charge sheet. Learned Additional Chief Judicial Magistrate being satisfied with the materials available on record took cognizance of the offences.

4. Being aggrieved and dissatisfied with the said order of taking cognizance by the additional Chief Judicial Magistrate, present application has been filed by the petitioner praying for quashing of criminal proceedings on the grounds that the ingredients of the offence u/s 493, 376, 420 of the Indian Penal Code has not been made out and learned Additional Chief Judicial Magistrate mechanically took cognizance of those offences. Further that the opposite party is an assistant teacher of a school and it was held that if a fully grown girl consented to act sexual intercourse with a promise of marriage, it is an act of promiscuity. So, ingredients of the offence u/s 376 of the Indian Penal Code has not been made out. Further that the ingredients of Section 493 of the Indian Penal Code also has not been made out as there was no fake marriage took place between the parties. So, there was no ingredients of Section 420 of the Indian Penal Code.

5. Learned Advocate Sanat Chowdhury appears for the petitioner and learned Advocate Rudradipta Nandy appears for the State. Learned Advocate Sabyasachi Banerjee and Sayanti Chakraborty appear for the opposite party No. 2.

6. Having heard the learned Counsel for the parties and after careful considerations of the provisions as laid down under Sections 482 and 401 of Criminal Procedure Code as well as the provisions u/s 493, 376, 420 of Indian Penal Code, I find that the proceedings being Ghola P.S. Case No. 66 of 2011 is at the very initial stage of trial. Additional Chief Judicial Magistrate being prima facie satisfied with the materials on record took the cognizance of the offence at the stage of accepting charge sheet, there is no scope for scrutinizing the evidences and analysing the value of the evidences in details, unless and until the evidences at its face value and accepted in their entirety do not constitute the offences alleged.

7. It is the duty of the Court u/s 482 of the Criminal Procedure Code to go into the merits of the evidence and appreciate correctly the documents and statements filed by the police, but at the stage of taking cognizance, meticulous consideration of offence and materials by the Court is not permissible. It is not the function of the Court to weigh the pros and cons of the prosecution case or to consider the necessity of strict compliance of the provisions which are considered mandatory and its effect of non-compliance. It would be done after the trial is

concluded. High Court exercising inherent power u/s 482 of the Criminal Procedure Code cannot proceed to consider the version of the complaint given out in which person complained vice versa of the complaint and enter into the debatable area to decide which of the version is true. Such an enquiry is wholly impermissible at this stage of taking of cognizance. In exercising the jurisdiction u/s 482, Criminal Procedure Code, to quash the proceedings, High Court should not appreciate the evidence inasmuch as it is the function of the Trial Court.

8. In view of the prima facie case as made out by the complainant and also in view of the fact that the trial is at the very initial stage, I am of the view that the proceedings if so permitted to continue will not be the abuse of process as there are some debatable issues raised in the complaint which should be dealt with by the Trial Court on appreciation of proper evidence. Thus, the application u/s 482, 401 of Criminal Procedure Code appears liable to be dismissed having no merit.

9. Hence the application stands dismissed without costs. Order of stay if any, granted by this Court on earlier occasions stands vacated. Urgent Photostat Certified Copy of this order if applied for be given to the parties on priority basis.