

Sessions Case No.51/2019
Reg No.51/2019 (CNR No.WBBB01-001238-2019)

31

10.10.2023

Today is fixed for order in respect of both the petitions dt.26.09.2023.

On behalf of all the four accused persons one petition u/s 317 Cr.P.C. is filed.

Heard. Considered. The petition u/s 317 Cr.P.C. is allowed on condition that they will not challenge their identity.

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31(contd.....)

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Ld.PP-in-charge is present.

The record is taken up for passing order.

I had opportunity to hear Ld.PP-in-charge as well as Ld.advocate for the defence. Ld.PP-in-charge submitted for an order directing further investigation of this case and for an order to the effect that during further investigation statement of the defacto complainant u/s 164 Cr.P.C. may be recorded.

Ld.advocate for the defence raised objection pointing out that charge has already been framed in this case on 13.08.2023. Since then the matter is pending for examination of CSW no.1.

Perused the case record. Considered.

Prior to venturing the merit of these two petitions, I would like to point out that on 04.03.2023 the defacto complainant Jabbar Kha filed one petition praying for further investigation through CID or by any special investigating agency. At the time of hearing of that petition dt.04.03.2023. Ld.PP-in-charge raised objection on the ground that as charge has already been framed, at this stage direction for further investigation would not be proper and justified. At present that prosecution has come up with almost same petitions.

It is the case of the prosecution that minor Sohel Kha @ Jahir Kha, aged about 09 years, was kidnapped for ransom. One Saidul Kha @ Sahidul Kha called his son on 04.02.2014 at around 02:00 pm on the pretext of enjoying Saraswati puja. Sohel Kha @ Jahir Kha left home riding bicycle of Saidul Kha @ Sahidul Kha with Saidul Kha @ Sahidul Kha. Thereafter Sohel Kha @ Jahir Kha did not return home and thus, GDE being no.146/2014 dt.05.02.2014 was recorded. On 07.02.2014 the dead body of Sohel Kha was found. On the basis of written complaint of this defacto complainant, specific case was started. After investigation charge sheet was filed against the FIR named accused persons and two others namely Parbat Lohar and Bijoy Das but not again said Saidul Kha @ Sahidul Kha. This defacto complainant filed protest petition(naraji) and the Ld.A.C.J.M. Suri, Birbhum directed for further investigation. Even after further investigation charge sheet has not been filed against said Saidul Kha @ Sahidul Kha.

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31(contd.....)

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On perusal of the case record it is explicit that Ld.Magistrate directed for further investigation as the statement of defacto complainant was not recorded u/s 164 Cr.P.C. In spite of that during further investigation the statement of the defacto complainant was not recorded u/s 164 Cr.P.C., on the contrary the statement of two other witnesses are recorded u/s 161 Cr.P.C. During further investigation, the reason for further investigation was not taken into consideration by the I.O. who conducted further investigation. In this case charge has already been framed and the matter is pending for recording of evidence of defacto complaint for years together. Considering all these, the prayer for further investigation by either CID or Specialized Agency was rejected keeping in mind the provision contained in section 319 Cr.P.C. for proceeding against any person, if in course of trial of an offence, it appears from the evidence that any such person not being the accused has committed any offence.

As per submission of Ld.advocate for the state as well as for the defence against the said order, the matter is pending.

If at this stage this court allows further investigation, it would technically amount to revision of its own order which this court cannot and should not. Accordingly I am not inclined to allow the petitions dt.26.09.2023, filed on behalf of the state.

Hence, it is

ORDERED

That both the petitions dt.26.09.2023, filed on behalf of the State of West Bengal for further investigation and recording of statement of the defacto complainant u/s 164 of Cr.P.C., are rejected.

To date (16.11.2023) for evidence of CSW no.1, the defacto complainant.

Dictated and corrected

A.S.J. 4th Court,Suri

Additional Sessions Judge,
4th Court, Birbhum at Suri
JO Code-WB00646