

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

25

22.03.2023

Today is fixed for order.

Four accused persons are present in court by filing hazira.

Lawyer's hazira is also filed on behalf of the defacto complainant.

Ld.PP-in-charge is present.

The record is taken up for order.

Perused the case record and the C.D. It is explicit that on 04.03.2023 the defacto complainant Jabbar Kha has filed one petition praying further investigation through CID or by any special investigating agency.

Ld.advocate for the defacto complainant submitted that his minor son Sohel Kha @ Jahir Kha, aged about 09 years, was kidnapped for ransom. He further submitted that one Saidul Kha @ Sahidul Kha called his son on 04.02.2014 at around 02:00 pm on the pretext of enjoying Saraswati puja. His son left home riding bicycle of Saidul Kha @ Sahidul Kha with him. Thereafter Sohel Kha @ Jahir Kha did not return home and thus, he lodged GDE being no.146/2014 dt.05.02.2014. 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. Hence the petition. According to him, IO is motivatedly protecting Saidul Kha @ Sahidul Kha.

Ld.PP-in-charge submitted that though Ld.Magistrate directed for recording statement of the defacto complainant u/s 164 Cr.P.C, but that was not done by the I.O. during further investigation. He further submitted that instead of getting such statement recorded by Ld.Magistrate, I.O. examined two witnesses and both of whom said that Saidul Kha @ Sahidul Kha may not be involved. According to him, at this stage direction for further investigation would not be proper and justified.

Ld.advocate for the defence raised vehement objection. He submitted that charge has been framed in the year 2019. Since then the

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Order no.25(contd.....)

matter is pending for recording the evidence of PW-01. He further submitted that this is nothing but an attempt to drag the proceeding to an indefinite period of time.

On perusal of the case record it is explicit that Ld.Magistrate directed for further investigation for not getting the statement of defacto complainant 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. So it is clear that during further investigation, the reason for further investigation was not taken into consideration by the I.O. who conducted further investigation. But in this case charge has already been framed and the matter is pending for recording of evidence of defacto complaint for years together.

There is 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. Thus, I do not find any reason to order for further investigation once again at this stage.

Hence, it is

ORDERED

That the petition dt.04.03.2023, filed by the defacto complainant, is considered and rejected.

Fix 16.05.2023 for evidence of CSW no.1, the defacto complainant.

Issue summons accordingly.

The prosecution is directed to take necessary steps for production of alamat, if any.

Dictated and corrected

A.S.J. 4th Court,Suri

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