

Special Case No.277/2023

CNR – WBSP01-012929-2023

Ref.:Haridevpur PS Case no: 419/2023 Dated : 07.09.2023

U/s 354/376(2)(d)(k)(l) of I.P.C read with Sec 6/10/21 of the Protection of Children from Sexual Offence Act r/w section 92(d) , Rights of persons with disabilities Act, 2016

Present :Sudipta Bhattacharjee (JO Code - WB00794)
Judge, Special Court & 2nd A.S.J.,
Alipore, South 24-Parganas.
State Vs. Jabesh Dutta & Ors.

Order No.27

Dt. 05.06.2024

Accused **Jabesh Dutta** and **Kaberi Das** are produced from J.C through VCS.

The accused/petitioner namely Jabesh Dutta, by filing a petition dated 15-04-2024 under section 220 of Cr.P.C., has prayed that the accused/petitioner be tried in a single proceeding in connection with all the eleven cases to ensure fair and comprehensive trial.

The petitioner in that instant petition has submitted that the investigating agency submitted charge sheet in all eleven cases and date has been fixed for consideration of charge. Ld. Advocate for the accused has contended that the petitioner/accused has been falsely implicated in eleven criminal cases which are similar in nature and forming part of the same transaction. He also pointed out that the Investigating Agency has proceeded to file FIR one after another and registered cases which is not permissible in law. He also pointed out that according to section 220 (1) Cr.P.C., when a person alleged to have been committed an offence in a series of acts, so inter-connected as to form part of the same transaction, such individual may be charged in single trial for each of such offence. Therefore, it is imperative that in all the eleven cases, the petitioner be proceeded with one trial and thereby ensure a fair and effective disposal of case. He has pointed out that there cannot be a second FIR or fresh investigation upon receipt of subsequent information regarding the same cognizable offence. Even after submission of charge sheet if any fresh information is received in respect of same transaction, the same should be investigated in the same case and no fresh FIR can be registered. According to the ld. Advocate, the subsequent FIRs are against the principle of Law and the petitioner deserves consolidation and trial of eleven cases in a single poceedings. Thus, he prayed for a single trial in all the eleven cases.

Contd....P/2

Special Case No.277/2023
CNR – WBSP01-012929-2023

Contd. Order No. 27 dt. 05.06.2024

The prosecution, on the contrary, by filing a written objection vehemently raised objection against the petition filed by the accused Jabesh Dutta under section 220 of Cr.P.C. The prosecution contended that there are eleven cases which are different in nature and victims are different. In some cases, additional accused persons are also added, date of filing is also different, cause of action is also different. It is further contended that each of the eleven POCSO cases i.e Special Case No. 277 of 2023, Special Case No. 278 of 2023, Special Case No. 279 of 2023, Special Case No. 355 of 2023, Special Case No. 356 of 2023, Special Case No. 357 of 2023, Special Case No. 358 of 2023, Special Case No. 359 of 2023, Special Case No. 360 of 2023, Special Case No. 361 of 2023 and Special Case No. 379 of 2023, the victim girls are different and time of commission of rape on each victim girls by the present accused person are different. The prosecution submitted that all the incident of rape are not inter-related, rather independent incident. It is contended that all the eleven cases are neither part of same transaction nor arising out of similar incident. It is pointed out that most of the blind survivors of the said blind school came from a poor families and many of them are orphan. All the victim girls have been subjected to penetrative sexual assault by the accused and abated by the other accused for a long period of time. The prosecution also submitted that all the victims are entitled to get separate compensation from the State. Thus, the prosecution prayed for rejection of the petition, as made by the accused under section 220 of Cr.P.C.

Initially on 04-04-2024, the accused/petitioner filed a petition for clubbing all cases in a single case. Subsequently on 15-04-2024, the petitioner again filed a petition in connection with Special Case No. 277 of 2023. It appears that eleven cases have been started on the basis of the complaint lodged by different blind survivors on different dates and separate cases have been registered as the victim girls had been experienced aggravated penetrative sexual assault by the Director of the 'Devine Fellowship Blind School' i.e the present accused person.

On 07-09-2023, the police of Haridevpur P.S. started three cases on the basis of allegation of three different blind survivors of the 'Devine Fellowship Blind School'. Subsequently, the cases had

Special Case No.277/2023
CNR – WBSP01-012929-2023

Contd. Order No. 27 dt. 05.06.2024

been transferred to S.J.P.U, Lalbazar for investigation. The first case was initially started under section 354/376(2)(d)(k)(l) of I.P.Code read with section 6 of POCSO Act read with 92(d) of the Right to Persons With Disabilities Act, 2016 on the basis of the allegations by one blind victim survivor against two accused persons which was registered as Haridevpur P.S. Case No. 419 dated 07-09-2023 under sections 354/376(2)(d)(k)(l) of I.P.Code read with section 6 of POCSO Act read with 92(d) of the Right to Persons With Disabilities Act, 2016, corresponding to Special Case No. 277 of 2023 against two accused persons. On the very date another case was filed which has been registered as Haridevpur P.S. Case No. 420 dated 07-09-2023 under sections 354/376(2)(d)(k)(l) of I.P.Code read with section 6 of POCSO Act read with 92(d) of the Right to Persons With Disabilities Act, 2016, on the basis of the allegations by one blind victim survivor corresponding to Special Case No. 278 of 2023 against three accused persons. During investigation, S.J.P.U, Lalbazar did not find involvement of one of the accused persons namely Bablu Kundu and as such, he was ultimately discharged from this case and the case was proceeded with against two accused persons. The police after completion of investigation, submitted charge sheet against two accused persons. On the very date another case was filed which has been registered as Haridevpur P.S. Case No. 421 dated 07-09-2023 under sections 354/376(2)(d)(k)(l) of I.P.Code read with section 6 of POCSO Act read with 92(d) of the Right to Persons With Disabilities Act, 2016, on the basis of the allegations by one blind victim survivor corresponding to Special Case No. 279 of 2023 against three accused persons. During investigation, S.J.P.U, Lalbazar did not find involvement of one of the accused persons namely Bablu Kundu and as such, he was ultimately discharged from this case and the case was proceeded with against two accused persons. The police after completion of investigation, submitted charge sheet against two accused persons.

Subsequently, eight separate cases were filed on the basis of the statement made by different blind survivors which have been registered as (I) Haridevpur P.S. Case No. 565 dated 29-11-2023 under sections 376(2)(d)(k)(l) of I.P.Code read with section 6/17 of POCSO Act, 85 of Juvenile Justice (Care and Protection) Act and

Special Case No.277/2023
CNR – WBSP01-012929-2023

Contd. Order No. 27 dt. 05.06.2024

section 92(d) of the Right to Persons With Disabilities Act, 2016, on the basis of the allegations made by one blind victim survivor corresponding to Special Case No. 355 of 2023 against two accused persons. The police after completion of investigation, submitted charge sheet against two accused persons,

(II) Haridevpur P.S. Case No. 566 dated 29-11-2023 under sections 376(2)(d)(k)(l) of I.P.Code read with section 6/17 of POCSO Act, 85 of Juvenile Justice (Care and Protection) Act and section 92(d) of the Right to Persons With Disabilities Act, 2016, on the basis of the allegations made by one blind victim survivor corresponding to Special Case No. 356 of 2023 against two accused persons. The police after completion of investigation, submitted charge sheet against two accused persons,

(III) Haridevpur P.S. Case No. 567 dated 29-11-2023 under sections 376(2)(d)(k)(l) of I.P.Code read with section 6/17 of POCSO Act, 85 of Juvenile Justice (Care and Protection) Act and section 92(d) of the Right to Persons With Disabilities Act, 2016, on the basis of the allegations made by one blind victim survivor corresponding to Special Case No. 357 of 2023 against two accused persons. The police after completion of investigation, submitted charge sheet against two accused persons,

(IV) Haridevpur P.S. Case No. 568 dated 29-11-2023 under sections 376(2)(d)(k)(l) of I.P.Code read with section 6/17 of POCSO Act, 85 of Juvenile Justice (Care and Protection) Act and section 92(d) of the Right to Persons With Disabilities Act, 2016, on the basis of the allegations made by one blind victim survivor corresponding to Special Case No. 358 of 2023 against two accused persons. The police after completion of investigation, submitted charge sheet against two accused persons,

(V) Haridevpur P.S. Case No. 569 dated 29-11-2023 under sections 376(2)(d)(k)(l) of I.P.Code read with section 6/17 of POCSO Act, 85 of Juvenile Justice (Care and Protection) Act and section 92(d) of the Right to Persons With Disabilities Act, 2016, on the basis of the allegations made by one blind victim survivor corresponding to Special Case No. 359 of 2023 against two accused persons. The police after completion of investigation, submitted charge sheet against two accused persons,

Special Case No.277/2023
CNR – WBSP01-012929-2023

Contd. Order No. 27 dt. 05.06.2024

(VI) Haridevpur P.S. Case No. 570 dated 29-11-2023 under sections 376(2)(d)(k)(l) of I.P.Code read with section 6/17 of POCSO Act, 85 of Juvenile Justice (Care and Protection) Act and section 92(d) of the Right to Persons With Disabilities Act, 2016, on the basis of the allegations made by one blind victim survivor corresponding to Special Case No. 360 of 2023 against two accused persons. The police after completion of investigation, submitted charge sheet against two accused persons.

(VII) Haridevpur P.S. Case No. 571 dated 29-11-2023 under sections 376(2)(d)(k)(l) of I.P.Code read with section 6/17 of POCSO Act, 85 of Juvenile Justice (Care and Protection) Act and section 92(d) of the Right to Persons With Disabilities Act, 2016, on the basis of the allegations made by one blind victim survivor corresponding to Special Case No. 361 of 2023 against two accused persons. The police after completion of investigation, submitted charge sheet against two accused persons and

(VIII) Haridevpur P.S. Case No. 604 dated 21-12-2023 under sections 376(2)(d)(k)(l)/201/195A/109 of I.P.Code read with section 6/17 of POCSO Act, 85 of Juvenile Justice (Care and Protection) Act and section 92(d) of the Right to Persons With Disabilities Act, 2016, on the basis of the allegations made by one blind victim survivor corresponding to Special Case No. 379 of 2023 against four accused persons. The police after completion of investigation, submitted charge sheet against four accused persons.

All the eleven cases have been investigated by S.J.P.U, Lalbazar and all the eleven cases were ended in submission of charge sheet. From the cases filed by the different victims i.e blind survivors, different cases were started against the present accused person along with others. It clearly transpires that all the victims are visually impaired. The victims are different. All the blind victims were individually subjected to aggravated penetrative sexual assault since their tender age. It further appears that each case is different from the other case and each visually impaired victim was subjected to penetrative sexual assault by the accused on different dates and at different times. The ages of the victims are not same. It is the trite law that the police has to start case if the

Special Case No.277/2023
CNR – WBSP01-012929-2023

Contd. Order No. 27 dt. 05.06.2024

police receives information relating to commission of cognizable offence under section 154 of Cr.P.C. The proviso of section 154 of Cr.P.C. delineated that if information is given by the woman against whom an offence under sections 326A, 326B, 354, 354A, 354B, 354C, 354D, 376, 376A, 376B, 376C, 376D, 376E or section 509 of I.P.Code is alleged to have been committed or attempted, then such information shall be recorded by a woman police officer or any woman officer. Thus, the police rightly started different cases on the basis of allegation made by different blind survivors separately.

According to Section 220(1) of Cr.P.C., if, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence. Section 220(3) of Cr.P.C. states that if the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences. According to Section 220(4) of Cr.P.C., if several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, or such acts.

In the instant petition, no such case has been made out. A separate incident of rape on one of the blind survivors cannot be inter-connected with the incident of rape of another blind survivors so as to form a part of a transaction. Each of the blind survivor of the said eleven cases has been subjected to rape a number of times at different dates, different times and sometimes at different place of occurrence. Thus, the incidents are different and the complainant of each blind survivor cannot be tried in one case. Therefore, there is no legal scope of amalgamation of these cases under section 220 of Cr.P.C.

Hence, the petition filed by the accused person on 15-04-2024 is considered and rejected on contest but without cost. Since the

Contd.....P/7

Special Case No.277/2023
CNR – WBSP01-012929-2023

Contd. Order No. 27 dt. 05.06.2024

petition filed by the accused on the self-same ground on 04-04-2024 and subsequently the present petition was filed, the petition which was filed on 04-04-2024 stands disposed of keeping in view of the findings of the petition dated 15-04-2024.

This order in respect of amalgamation is applicable to all the other ten cases i.e Special Case No. 278 of 2023, Special Case No. 279 of 2023, Special Case No. 355 of 2023, Special Case No. 356 of 2023, Special Case No. 357 of 2023, Special Case No. 358 of 2023, Special Case No. 359 of 2023, Special Case No. 360 of 2023, Special Case No. 361 of 2023 and Special Case No. 379 of 2023.

To 13.06.2024 for production of accused persons and consideration of charge.

D/c by me.

Sd/-

Judge, Special Court &
2nd A.S.J., Alipore

Sd/-

Judge, Special Court &
2nd A.S.J., Alipore.