

Session Trial - 02(06)2024
Sessions Case No. 45 of 2024
Maniktala PS case no. 259 dated 29.09.2023

Order No. 03 dated 12.06.2024:

The accused persons namely Anirban Kundu, Kaushik Kundu, Sudheshna Kundu and Suman Dutta are produced from J/C.

Ld. PP in charge Mr. Asim Kumar is present.

The complainant Swarnali Saha appears in person along with her Ld. Advocate.

The instant case was initiated on the basis of the complaint lodged by Swarnali Saha to the OC, Maniktala PS on 29.09.2023.

As per the said complaint out of an affair between the complainant and the accused Anirban Kundu, they were married on 08.12.2022 as per the Special Marriage Act and subsequently social marriage took place on 03.05.2023.

As per the allegation of the complainant, at the time of the marriage, several articles along with the ornaments and liquid cash were given as per the demand of the accused husband and his parents.

It was also alleged that soon after marriage, the accused persons had asked the complainant to handover all her jewelry and liquid cash, which she got as the nuptial gift, to them and as a disagreement arose over this issue, the complainant was physically assaulted by her husband.

The allegation ran in the fashion that in the middle part of May, 2023 the complainant came to know that her husband had some extra-marital affairs and also a regular visitor of the brothel and it was alleged that when she raised voice she was assaulted by her husband and in laws.

It also appears from the complaint that at the end part of May 2023, the complainant went on a pleasure trip with her husband at Sikkim and after returning from the said trip, the accused persons put pressure upon her to give a lump sum cash to them and at the time of said altercation, she was assaulted.

It was the allegation that in the month of June, 2023 her father in law and the accused Suman Dutta tried to touch her in an inappropriate manner and also sexual coloured remarks were passed by her husband, father in law and the said Suman Dutta.

She also alleged that it came to her knowledge that her husband was a drug addict.

It was also the allegation that her husband had circulated her nude photographs and videos to the accused Suman Dutta.

It was alleged that one day the complainant had seen her mother in law and the accused Suman Dutta in compromising situation and when she raised voice, she was assaulted by all the accused persons.

Her allegation also ran in the fashion that she was kept in a room under lock and key.

Session Trial - 02(06)2024
Sessions Case No. 45 of 2024
Maniktala PS case no. 259 dated 29.09.2023

Her allegation in the complaint was that on 17.08.2023 after having dinner when she entered into her bedroom, the accused persons including her husband forcefully placed one pill into her mouth and forced her to swallow the same.

It was also alleged that on the next day morning i.e on 18.08.2023, they again forced her to take another two pills and afterwards she felt pain in her abdomen and bleeding started and she was asked to go to her father's place.

From her complaint it also appears that the accused persons proposed her to take a reasonable amount of liquid cash and to end the marital tie.

It was also alleged that the accused persons went to her father's place and assaulted her mother and herself.

The allegation also ran in the fashion that on 25.09.2023 the accused persons went to the place of practice of the complainant (High Court Calcutta) and threatened her.

Ultimately on 29.09.2023 she had lodged the complaint which gave birth of Maniktala PS case No. 259 dated 29.09.2023.

During the pendency of the investigation, the present complainant had filed a writ petition before the Hon'ble Court vide No. 25241 of 2023 wherein she had prayed for a direction from the Hon'ble Court to instruct the police authorities to arrest the accused persons for conduction of impartial investigation, for a direction to instruct the police authority to search all possible address of the accused persons and to seize the electronic gadgets used by the accused persons which were allegedly used for circulation of obscene photographs of the complainant. Prayer was also made to instruct the police authority to seize and confiscate the *Sridhan* articles of the complainant. Protection was also sought for from the Hon'ble Court so that the complainant can perform her practice in a free mind without any pressure or fear from any angle.

Subsequently, the present complainant had filed a supplementary affidavit in the said writ petition.

During course of hearing, the orders passed by the Hon'ble Court dated 23.11.2023 and 14.12.2023 in the said Writ Petition were placed before me. The Hon'ble Court has been pleased to ask the State to place the status of investigation of the case.

It was submitted by the Ld. PP in charge and the Ld. Counsel for the complainant that the Hon'ble Court did not pass any stay order on the trial of the instant case but the said Writ Petition was not finally disposed of till now.

Keeping reliance on the said submission, I am of the view that there is no bar to proceed with the trial of the case, when the accused persons are in custody and when the complainant is appearing regularly to get justice.

I have gone through the CD.

Session Trial - 02(06)2024
Sessions Case No. 45 of 2024
Maniktala PS case no. 259 dated 29.09.2023

It appears that the said complainant had visited the chamber of one doctor on 07.10.2023 (after lodging of the complaint) and the IO had recorded the statement of the said doctor wherein the said doctor specifically stated that there was a history of *MTP Kit induced abortion* in August 2023 and the said doctor specifically explained that the said complainant had undergone a *self-abortion* by means of MTP Kit.

From the CD it also appears that the said victim was again examined at department of FMT, RG Kar Medical College and Hospital on 30.10.2023 (after lodging of the complaint) and the doctor opined that there was evidence of vaginal penetration but there were no clinical signs of pregnancy and the said doctor did not rule out any event of recent abortion.

The CD also shows that the said victim was again examined at RG Kar Medical college and Hospital on 04.11.2023 (in course of investigation) and in the history sheet it was noted that the said victim/complainant had two months of Amenorrhoea with effect from 20.06.2023 and that there was history of using MTP kit in August, 2023.

The said doctor, at the time of examination of the said victim/complainant, did not find any clinical sign of pregnancy.

From the CD as well as the case record, it appears that one mobile phone was seized on 12.04.2024 from one Krishnendu Mondal, some gold jewelries were seized from the locker of SBI, FE Block, Salt Lake on 14.03.2024 (when the accused persons were in custody), other ornaments on 12.03.2024, marriage certificate and mobile phones and laptop from the house of the accused persons on 12.03.2024 (when the accused persons were in custody), some other mobile phones on 10.03.2024, some other electronic gadgets on 01.03.2024, the photographs of marriage and the invitation cards were also seized on 11.10.2023.

It appears from the CD that on 02.01.2023, the IO had recorded the statements of seven witnesses under section 161 Cr.PC.

The CD also shows that the statement of the complainant was recorded by the on 30.09.2023 U/s 161 Cr.P.C and on that very date the statement of the complainant was recorded by the Ld. JM U/s 164 Cr.P.C.

It appears from the case record that on 28.05.2024 the IO had submitted the charge-sheet for offence under section 498A/406/506/509/341/323/354C/354D/313 read with section 34 IPC, section 3/ 4 of DP Act, section 66/67A of IT Act and section 5 of MTP Act, 1971.

On the basis of the said CS, case record was taken up for framing of charge.

The case under consideration, involves serious allegation of domestic violence, forced termination of pregnancy and potential dissemination of private photographs, highlighting the complexities of legal interpretation and evaluation

Session Trial - 02(06)2024
Sessions Case No. 45 of 2024
Maniktala PS case no. 259 dated 29.09.2023

of evidence in order to justify the framing of charge or discharge as prayed by the prosecution and the accused persons as well as the complainant and the same is based on the available evidence and legal consideration.

In the process of framing of charges, it is essential to adhere to establish legal principles which will guide the assessment of evidence and determination of potential offences.

The principle that no roving inquiry or mini trial can be conducted at the stage of framing of charges emphasises the importance of relying on prima facie evidence and allegations presented during the investigation.

It is trite law the application of judicial mind is necessary to determine whether a case has been made out by the prosecution for proceeding with trial and it would not be necessary to dwell into the pros and cons of the matter by examining the defence of the accused at the time of framing of charge.

The only duty of the court is to merely examine the evidence placed by the prosecution in order to determine whether or not there are sufficient grounds to proceed against the accused on the basis of the CS submitted by the IO. The duty of the court is also to peruse the evidence collected by the IO and the documents produced before the court to reach to the conclusion whether there was any prima facie ground to believe that charge can be framed.

In a decision of the Hon'ble Apex Court as reported in **2023 SCC online SC 1294 (State of Gujrat versus D.K Rao)** it was observed by the Hon'ble Court that at the time of framing of charge the accused has no right to produce any materials and call upon the court to examine the same and the trial court has to apply its judicial mind to the facts of the case as may be necessary to determine whether a case has been made out by the prosecution to go for trial.

In the said decision, it was also observed by the Hon'ble Court that at the time of framing of charge, the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and the court has to evaluate the said materials in order to determine whether the facts emerging from the said materials taken on its face value, disclosed the existence of the ingredient necessary to frame charge of the offence as alleged.

I also want to rely on another decision of the Hon'ble Apex Court as reported in **(2014)11 SCC 709 (State of Tamil Nadu Vs N. Suresh Ranjan)**.

I also want to add that the standard for framing charges requires the court to consider whether the allegations, supported by the evidence collected by the IO, create a reasonable believe that the accused persons might have committed the offence.

This preliminary assessment is very crucial in determining the sufficiency of grounds to proceed with the trial and does not involve a detailed examination of the evidence or a conclusive determination of the guilt.

Session Trial - 02(06)2024
Sessions Case No. 45 of 2024
Maniktala PS case no. 259 dated 29.09.2023

The Ld. Advocate for the accused persons placed before me the “*Textbook of Obstetrics*” authored by Dr. D.C. Dutta and submitted that the protocol of using of MTP kit was not followed in this case and accordingly, it cannot be considered that there was an incident of causing miscarriage without the consent of the complainant.

In the present case, at the time of hearing, the complainant had placed before me one GD lodged by the accused Anirban Kundu to the OC, Bidhannagar South PS wherein he admitted that on 18.08.2023 the said victim had history of miscarriage, but the said GD is silent about the process of abortion or the place of the said abortion or the period of pregnancy. The said GD was lodged by the husband of the complainant, who was a doctor by profession and as such it was expected that the same would be part of the said GD but the same is missing there.

I cannot ignore this document as the same was part of the SLP preferred before the Hon’ble Apex Court by the accused persons vide Special Leave to appeal (Crl) No 2928 of 2024 which was against the order dated 30.01.2024 passed by the Hon’ble High Court, Calcutta in CRM (A) No. 5224/2023 wherein the prayer for anticipatory bail of the accused persons was rejected.

The said document itself is a prima facie corroborative evidence regarding miscarriage as ventilated in the contents of the complaint, statement of complainant U/s 161 and 164 Cr.P.C and the statement of the private doctor.

In the present case, the victim’s detailed accounts of the traumatic events she experienced, including the torture and forced termination of pregnancy, formed the base for consideration of the charges under section 313 IPC.

The consistency of the statements of the complainant across various legal proceedings, coupled with the accused persons’ admission of the termination of pregnancy provides a strong indication of potential criminal conduct warranting the framing of charges.

Whether the said termination of pregnancy was forced or not, can only be appreciated after according an opportunity to the victim to depose before the court and the accused availing their scope to cross examine the victim and other relevant witnesses related to the incident.

Prima facie, the incident has legs to stand at this juncture and hence cannot be thrown away without standing test during trial.

This element, combined with the legal guiding principles of framing of charges, establish a prima facie case for proceeding with charges under section 313 IPC.

In this case, CS was also filed for offence U/s 5 of MTP Act.

The MTP Act provides a legal framework for regulating abortions in our country. S. 3 lays down specific conditions and gestational limits under which

Session Trial - 02(06)2024
Sessions Case No. 45 of 2024
Maniktala PS case no. 259 dated 29.09.2023

abortion is permitted by a registered Medical Practitioner. The said Act allows for abortion without stringent conditions during the first 12 weeks of pregnancy.

Sec.5 of the said Act delineates situations where the provisions of Sec. 3 or 4 are not applicable, particularly when immediate termination of pregnancy was required to save the life of the pregnant woman.

Sec.5 of the said Act emphasizes the gravity of unauthorized abortion and the legal repercussions for the individuals who violate the regulations set forth in the said Act.

The conflict between the MTP Act and Sec.313 IPC underscores the delicate balance between protecting the rights and health of the pregnant woman, ensuring safe and legal abortion practices and upholding the legal framework that governs reproductive rights and responsibilities in the country.

In my view, in the present case, there are no ingredients which may attract the provision of Sec. 5 of the MTP Act and obviously charge cannot be framed under section 5 of MTP Act.

It appears that in this case, several electronic gadgets were seized by the IO in respect of the allegation of circulation of obscene photographs of the complainant.

It appears that on 13.03.2024 the IO had made a prayer before the Ld. ACJM to send the said seized electronic gadgets to the Cyber Forensic and Digital Evidence Examiners' Laboratory of CID, West Bengal for its forensic examination and the same was allowed by the Ld. ACJM and from the Memo of the Director in charge of Cyber Forensic and Digital Evidence Examiners' Laboratory of CID, West Bengal dated 24.05.2024 it appears that they have received the said articles but till date could not submit the report and as such, in the CS the IO made a prayer for submission of supplementary charge sheet.

The allegation was that the obscene photographs of the victim was sent to the mobile of the accused Suman Dutta by the accused Anirban Kundu and the said allegation prima facie attracts the offence U/s 66/67A of IT Act.

On the basis of my discussion mentioned above, I am of the view that prima facie case under section 498A/34 IPC is made out against the accused persons Anirban Kundu, Kaushik Kundu, Sudeshna Kundu and the said charge will not stand against the accused Suman Dutta as he is not a family relation of the other accused persons. He was the chamber assistant of the accused persons Anirban Kundu and Kaushik Kundu and the offence under section 506/509/341/323/354C/313 read with section 34 IPC is made out against all the accused persons and the offence under section 66/67A of IT Act is made out against the accused persons Anirban Kundu and Suman Dutta.

I do not find any prima facie material to frame charge under Section 354D IPC and section 5 of MTP Act, 1971.

Session Trial - 02(06)2024
Sessions Case No. 45 of 2024
Maniktala PS case no. 259 dated 29.09.2023

Charges against the accused persons are framed accordingly.

Contents of charge is read over and explained to the accused persons, and they pleaded not guilty and claimed to be tried.

Fix **02.08.2024 & 03.08.2024** for evidence of the complainant.

Issue summons accordingly,

D/C by me

ASJ, 1st Court, Sealdah

(Anirban Das)/WB0691
Addl. Sessions Judge, 1st Court,
Sealdah, 24-Pgs.(S).

Later dated 12.06.2024

Bail petition filed for the accused persons namely Anirban Kundu, Kaushik Kundu, Sudheshna Kundu and Suman Duttta dated 07.06.2024 is taken up for hearing.

The Ld. Advocate for the complainant as well as the Ld. PP in charge stressed upon the order of the Hon'ble High Court Calcutta as passed in CRM (A) 5224 of 2023 dated 30.01.2024 wherein prayer for anticipatory bail of the accused persons were rejected.

I have considered the said order.

The Hon'ble Court has been pleased to reject the prayer of anticipatory bail at the stage of investigation as the Hon'ble Court apprehended that enlarging the accused persons on anticipatory bail would be inimical to the investigation.

It also appears from the record that after their arrest, their prayer for bail under section 439 Cr.P.C was rejected by this court several times when the investigation was pending.

The said accused persons are in custody since 01.03.2024 since when they were brought under arrest on the strength of WA issued against them.

Today when I am considering the prayer for bail, the investigation was completed, all the stridhan articles were seized by police, all the electronic gadgets, which were allegedly used for circulation of obscene photographs of the complainant were also seized and the same are lying in the custody of Cyber Forensic and Digital Evidence Examiners' Laboratory of CID, West Bengal for forensic examination.

I did not find anywhere in the CD that the said accused persons have their previous criminal antecedents. They have their permanent place of residence and the accused Anirban Kundu and Kaushik Kundu are by profession doctors.

I am also of the view that there is no necessity to keep the accused persons behind the bar to conduct the trial.

Session Trial - 02(06)2024
Sessions Case No. 45 of 2024
Maniktala PS case no. 259 dated 29.09.2023

Under the circumstances, I think that the accused persons Anirban Kundu, Kaushik Kundu, Sudheshna Kundu and Suman Dutta may be released on their furnishing bond of Rs. 40,000/- each with two sureties of Rs. 20,000/- each, one of whom must be local surety having landed property within the jurisdiction of Sealdah court, or of cash surety of like amount (like NSC/Fixed Deposit etc *but not liquid cash*) subject to the satisfaction of the Ld. ACJM, Sealdah on condition that they will not disturb/influence the complainant or the other witnesses of this case in any manner and will not leave Kolkata without taking prior permission from the court, id to JC.

If on bail, to date (02.08.2024 & 03.08.2024) for appearance and evidence.

Let a copy of this order be sent to the Ld. ACJM, Sealdah for information and taking necessary action.

D/C by me

ASJ, 1st Court, Sealdah

(Anirban Das)/WB0691
Addl. Sessions Judge, 1st Court,
Sealdah, 24-Pgs.(S).