

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side**

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 649 of 2017

With

CRAN 2/2017 (Old CRAN 3544/2017)

Rabi Das @ Rabindra Nath Das

Versus

The State of West Bengal & Another

For the Petitioner : Mr. Amal Krishna Samanta, Adv.

For the State : Mr. Bibaswan Bhattacharya, Adv.

Heard on : 20.03.2024

Judgment on : 06.05.2024

Ajay Kumar Gupta, J:

1. Rabi Das @ Rabindra Nath Das being an accused filed an application for discharge from the Criminal Case being S.C. 10(2) of 2016 arising out of Moyna Police Station Case No. 182 of 2015 dated 04.08.2015 under Sections 376(2)(i)/506 of the Indian Penal Code and Section 4 of Protection of Children from Sexual Offences Act relating to M.P. Case No. 859/2015 giving rise to G.R. Case No. 2006/2015 pending before the Learned Additional Sessions Judge, 2nd Court, Tamruk, Purba Medinipur on the ground that the DNA Report, collected from CFSL, has established that the present accused/petitioner is not the biological father of the child born to the victim. The allegation of rape is out and out false and he has been falsely entangled into this case.

2. The learned Additional Sessions Judge, after hearing the parties and considering the DNA Report as well as other surrounding circumstances of the allegation, came to a conclusion that he may not be a biological father of the child does not necessarily mean that he has not committed rape as alleged because to arrive at such decision, a mixed question of law and fact is required, which cannot be decided without adducing evidence from both sides and finally

rejected his prayer for discharge on 16.01.2017 observing therein that at this stage it would be prejudiced the whole issue if the accused is discharged only on the basis of DNA Report since the allegation of the victim is that the accused has committed rape forcibly on several occasions on different dates.

3. Being aggrieved by and dissatisfied with the said rejection order dated 16.01.2017, the present petitioner/accused filed this revisional application seeking for setting aside the impugned order dated 16.01.2017 as well as quashing of the aforesaid proceeding pending before the Learned Additional Sessions Judge, 2nd Court, Tamruk, Purba Medinipur.

4. The brief facts are relevant for the purpose of disposal of this case as under:

4a. On 30.07.2015, the de-facto complainant filed a petition of complaint under Section 156(3) of the Code of Criminal Procedure before the learned Chief Judicial Magistrate, Purba Medinipur at Tamruk to the effect that his daughter aged about 14 years was a student of Class-VII. On 10.07.2015, the said daughter of the complainant felt illness in her school. Initially, she was treated by a

quack doctor and, thereafter, she was further treated by Dr. B. K. Roy at Tamluk and came to know that his daughter found pregnant for 7/8 months. On asking, she disclosed that on 18.12.2014 at about 10 am, the petitioner/accused took her to his house forcibly and committed rape against her will and further threatened her if she disclosed the fact then she would be killed. The de-facto complainant also stated in his complaint that the present petitioner/accused committed rape upon her day by day in absence of the complainant and his wife. On the basis of direction passed by the learned Court below, the Police authority has treated the written complaint as an FIR, resulted in registration of a Moyna Police Station Case No. 182 of 2015 dated 04.08.2015 under Sections 376(2)(i)/506 of the Indian Penal Code read with Section 4 of Protection of Children from Sexual Offences Act has been started against the present petitioner and cause investigation. Subsequently, a charge sheet has been submitted being Charge Sheet No. 29/2016 dated 09.02.2016 under Sections 376(2)(i)/506 of the IPC and Section 4 of the Protection of Children from Sexual Offences Act against the petitioner and later on a supplementary charge sheet has been submitted after collecting the DNA Report in negative. Hence, the instant criminal revisional application.

SUBMISSION ON BEHALF OF THE PETITIONER:

5. Learned counsel appearing on behalf of the Petitioner submitted that the petitioner is totally innocent. The accusation made by the father of the victim is out and out false. Petitioner has been falsely implicated into this case. Such fact has been corroborated by the DNA Report of CFSL. The DNA report clearly indicates the present petitioner is not the biological father of a female baby titas. In view of the DNA report and entire facts, the proceeding is deserved to be quashed. Petitioner's prayer for discharge could have allowed by the learned Court below as allegation of rape by him and a child was born as a consequence of such act is negative. DNA report of the minor child shows that the petitioner is not her father rendering the allegations patently absurd and inherently improbable which is liable to be set aside.

SUBMISSION ON BEHALF OF THE STATE:

6. On the other hand, learned counsel appearing on behalf of the State produced the case diary and further vehemently argued that the learned Court below has rightly rejected his prayer for discharge. The allegation of rape by a minor child is a serious offence.

The accused person has raped her forcibly in absence of her parents on several occasions and different dates. The allegation of rape and determining the biological father of the child are two different issues. It is true that the DNA report of the CFSL indicates that petitioner is not the biological father of the female baby titas but allegation of rape only can be decided by adducing evidence from both the sides. Only then question of acquittal or conviction arise.

6a. It is further submitted that during investigation, statement of the victim was recorded under Section 164 of the Cr.PC and medical reports were also collected. From perusal of those documents, a prima facie case has been established against the present petitioner of the offences as alleged by the de-facto complainant and the minor child as such, this case is liable to be dismissed.

DISCUSSIONS, ANALYSIS AND CONCLUSION OF THIS COURT:

7. Having heard the elaborate submissions of the parties and on perusal of the application and annexure thereto as well as the case diary, this Court finds during investigation statement of the

victim was recorded under Section 164 of the Cr.PC. From perusal of the said statement, it is clear allegation that the present petitioner had committed rape upon the victim not only a single day but also on several occasions on different dates.

7a. It further reveals, petitioner has threatened her to murder if she disclosed the fact of rape. The incident of rape came to knowledge of the parents when she became ill in her school and when the doctor examined her. She also stated before the doctor about the name of the accused who had committed rape upon her forcibly on several occasions on different dates.

7b. It further reveals, from the case diary that she was 14 years old at the time of incident. All these facts established a prima facie case of rape or penetrative sexual assault as well as threat perception against the present petitioner. It is admitted facts that DNA report, collected from the CFSL, shows the present petitioner is not the biological father of female baby titas. Only on such scientific report, the accused cannot be discharged from a case where direct evidence is apparent from the Case Diary. Allegation of rape may be proved by

substantive evidence and to prove substantive evidence, leading of evidence from both the sides are essential. Accordingly, at this initial stage, the accused cannot be discharged only on the basis of scientific report i.e. DNA Report because DNA analysis report cannot be said to be the conclusive evidence regarding rape and can only be used as corroborative evidence in the trial and it is not clinching evidence.

8. In the light of above discussions, this Court finds the rejection of prayer for discharge of the accused person only on the ground that he is not the biological father of the female baby titas as per the DNA Test Report collected from CFSL, is correct, legal and valid. There is no error in jurisdiction or law. Thus, the revisional application has devoid of merits.

9. Accordingly, **C.R.R. 649 of 2017** is, thus, **dismissed** without order as to costs. Consequently, **CRAN 2/2017 (Old CRAN 3544/2017)** is also, thus, disposed of.

10. Case Diary is to be returned to the learned Counsel for the State.

11. Interim order, if any, stands vacated.

12. Let a copy of this judgment be sent to the learned Court below for information.

13. Parties shall act on the server copies of this order uploaded on the website of this Court.

14. Urgent photostat certified copy of this judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J)