

Towajjel Sk.

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Court : Kolkata

Decided On : Jul-12-2011

Judge : Kanchan Chakraborty, J.

Acts : Indian Penal Code (IPC) - Section 302, 120B, 498A; Code of Criminal Procedure (CrPC) . - Section 200, 401, 482, 311; Evidence Act - Section 165

Appeal No. : C.R.R.4370 of 2008.

Appellant : Towajjel Sk.

Advocate for Def. : Mr. S. S. Roy. Adv

Advocate for Pet/Ap. : Mr. Ibrahim Shaikh. Adv

Judgement :

1. This revisional application has been taken out by the defacto complainant Towajjel Sk. challenging the legality, validity and propriety of the order dated 4.8.2008 passed by the learned Chief Judicial Magistrate, Krishnagar, Nadia in Case No.1174-C of 2005 whereby his prayer for unearthing the dead body of his daughter (Benajir Khatun) for the purpose of F.S.L. examination was rejected.

2. It is reported by the learned Counsel appearing for the parties as well as Mr. Roy, learned Counsel appearing for the State that the trial has already been commenced under Section 302/120B/498A of the Indian Penal Code against the opposite parties and today is fixed for examination of the defacto complainant in

the learned Trial Court.

3. I find that this order was passed out of committal of the case to the Sessions Court being exclusively triable by the Court of Sessions. It can well be assumed that before committing the case to the Sessions Court, the learned Magistrate recorded statements of the complainant as well as of the witnesses named in the petition of complaint under Section 200 of the Code of Criminal Procedure. After being satisfied with the contents of the petition of complaint as well as the initial deposition of the witnesses, the learned Court found that a case of murder, prima facie, was made out against the opposite party.

4. That being the fact when the trial has already been commenced against the opposite party, it would be wise and proper for the learned Trial Court to exercise his power under Section 311 of the Code of Criminal Procedure read with Section 165 of the Indian Evidence Act, if Court finds that there is substance in the prayer of the petitioner that the dead body of Benajir Khatun is required to be unearthed for the purpose of examination by F.S.L. in order to find out reason of her death. The application praying for unearthing the dead body for the purpose of examination by F.S.L. was filed long three years after the incident, i.e., before committal of the case to the Court of Sessions. In course of time, the case has been committed and trial commenced after framing of charge. If the prayer of the petitioner is to be allowed in this revision, that will be amounting to giving him an opportunity to adduce further evidence besides what he had adduced already before commitment. Naturally, he has the opportunity to raise this point in course of his examination in Court and it would be open for the learned Trial Court to consider his prayer as to whether that examination is required for the purpose of proper adjudication of the case.

5. In view of the facts above, I find it inexpedient to allow the prayer of the petitioner. The petition stands dismissed with a direction upon the learned Trial Court that in case the learned Trial Court finds it necessary to collect further evidence as to the reason of death of Benajir Khatun, it may exercise its discretion under Section 311 of the Code of Criminal Procedure read with Section 165 of the Indian Evidence Act.

6. This revisional application is, thus, disposed of.

7. Urgent Photostat certified copy of this order, if applied for, be given to the learned Advocates of the parties upon compliance of necessary formalities.

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