

Party Name : SUMITA DEBBARMA Vs SUJIT PAUL & ANR

THE HONBLE THE CHIEF JUSTICE T. VAIPHEI

30.03.2017.

Heard Mr. A. Basak, the learned counsel for the petitioner. Also heard Mr. D. Chakraborty, the learned Sr. Counsel assisted by Mr. H. Laskar, the learned counsel for the respondent No.1 and Mr. R.C. Debnath, the learned Addl. Public Prosecutor appearing for the State.

This petition is directed against the order dated 15.04.2016 passed by the learned Judicial Magistrate Ist Class, Court No.4, Agartala, West Tripura in PRC No.108/2014 rejecting the prayer of the petitioner for adding the charge of Section 11 of the Protection of Children from Sexual Offences Act, 2012 against the respondent No.1.

Seen the copy of the F.I.R., which is annexed at Annexure-A and the statements of the prosecutrix as well as the mother of the prosecutrix recorded under Section 161, Cr.P.C.

Under Section 11 of the Protection of Children from Sexual Offences Act, 2012, it is provided that a person is said to commit sexual harassment upon a child when such person with sexual intent, -

(i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or

(iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means.

The punishment for sexual harassment under Section 11 of the Act is an imprisonment for a term which may extend to three years, which shall also be liable to fine.

In order to satisfy the ingredients of Section 11 of the Act, what is of most importance is the uttering of the word or making of the sound etc. should be with sexual intent. Unless such act of omission or commission is committed with sexual intent, the question of invoking Section 11 of the Act does not arise. Neither the FIR nor the statements of the witnesses recorded under Section 161 Cr.P.C. annexed to Annexure-E or Annexure-F disclose any whisper of statement that the respondent No.1 committed such act of commission or omission *with sexual intent*. As there is no *prima facie* case of Section 11 of the Act, the trial Court rightly rejected the application for adding the aforesaid Section to the Charge already framed against the respondent No.1 U/s 354-A IPC.

Accordingly, the petition is dismissed.