

**HIGH COURT OF TRIPURA
AGARTALA**

Crl. Petn.13 of 2024

Jannat Begam and others

..... **Petitioner(s)**

Versus

The State of Tripura and others

..... **Respondent(s)**

For Petitioner(s) : Mr. Samar Das, Advocate.

For Respondent(s) : Mr. S. Ghosh, Addl.PP.
Mr. D. Sarma, Advocate.
Ms. S. Deb, Advocate.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

ORDER

27.06.2024

Heard Mr. Samar Das, learned counsel for the petitioner. Also heard Mr. S. Ghosh learned Addl. PP for the State. Mr. D. Sarma, learned counsel as well as Ms. S. Deb, learned counsel is present for the private respondent No.2.

[2] This criminal petition is filed by the petitioner under Section 482 of Cr.P.C. to quash the impugned complaint and proceedings initiated on the basis of written complaint filed by the private respondent No.2 vide case No. CR(IPC) 159 of 2023 under Section 420/503/34, which is pending in the Court of learned Judicial Magistrate, 1st Class, North Tripura, Dharmanagar and also to quash/set aside the impugned order dated 04.12.2023 passed by the learned CJM, North Tripura, Dharmanagar in CR(IPC) 159 of 2023.

[3] The facts of the case of the petitioners in brief are that the marriage between the petitioner No.1(wife) and private respondent No.2(husband) was solemnized on 18/11/2020. Thereafter, the respondent husband started torture upon his wife, petitioner No.1 both mentally and physically. It is contended in the instant petition that the

wife, petitioner No.1 considering poor condition of her parents tolerated everything of her husband and his family members and on that issue, many meetings were held. On 11/12/2021, the wife of the complainant, petitioner No.1 gave birth to one female child Nadira Begam. Thereafter on many occasions, the complainant continued his torture upon the wife petitioner No.1 and on 4/11/2023 driven out his wife from his house. Finding no other alternative, the petitioner wife takes shelter in her parental house at Agartala. It is also contended that the petitioner wife while coming at her parental house with her baby girl lodged a complaint to the O/C Dharmanagar P.S. on 04/11/2023 with all details of torture caused upon her but the concerning P.S. did not register the case and did not take any action on the basis of said complaint. It is further contended that the petitioner wife all on a sudden, received a notice from the court of learned Judicial Magistrate, 1st Class, Dharmanagar, North Tripura in connection with C.R. (IPC) 159 of 2023 u/s 420, 503/34 of IPC as per complaint filed by the husband of the petitioner No.1 herein and the petitioners came to know that by the impugned order dated 04.12.2023, learned court below has taken cognizance offence.

[4] Being aggrieved, the petitioners have approached this Court seeking following reliefs:

- "a) Admit this petition;
- b) Call for the records;
- c) Issue notice upon the respondents;

सत्यमेव जयते AND

After hearing of the parties and on perusal of the evidence on record your lordship be please enough to quash the impugned complaint and proceedings which is initiated on the basis of said written complaint filed by the private respondent No.2 vide case No. C.R. (IPC) 159 of 2023 U/S 420, 503/34 of IPC which is pending in the court of Judicial Magistrate, 1 Class, North Tripura District, Dharmanagar, Tripura.

AND

After hearing the parties be please to quash or set aside the impugned order dated 4/12/2023 passed by the Ld. CJM, North Tripura, Dharmanagar whereby Ld. Judge without following the process of section 200 of Cr.P.C took the cognizance of this case beyond the provision of law.

AND

Further be please to stay the proceedings of the case vide No. CR (IPC) 159 of 2023 which is pending in the court of Ld. Judicial Magistrate, 1 Class, Court No.4, North Tripura, Dharmanagar till disposal of this petition....."

[5] Mr. S. Das, learned counsel for the petitioners submits that the learned court below without following due process of law u/s 200 of Cr.P.C. and without examining the complainant and his witnesses, has taken cognizance and issued summon upon the petitioners. He further submits that it is now well settled that the objects of Section 200 Cr.P.C. provided for examination of the complainant and his witnesses by the court is to satisfy itself about the existence of prima facie case against the person accused of the offence and to ensure that such person is not harassed by false and vexatious complaints by issue of process. To support his contention, learned counsel has placed reliance on the order dated 16th April 2019 passed by the High Court of Karnataka in ***Criminal Petition No.5866 of 2013 [Yakoob Sharief S/O Mahaboob Sab K Advocate vs. The State of Karnataka]***, which reads as under:

".....17. In the instant case, at the first instance, the learned Magistrate directed the complaint to be registered as a private complaint. As a result, the Magistrate was required to follow the procedure under Section 200 or under Section 202 of Cr.P.c. Since the Magistrate had resorted to Section 202 of Cr.P.C., in view of the proviso to Section 202 of the Code as explained above, the learned Magistrate could not have issued a direction for investigation "unless the complainant and the witnesses present (if any) have been examined on oath under Section 200". This proviso is couched in mandatory terms. By use of the word "shall", it cast an obligation upon the Magistrate to call upon the complainant to examine on oath himself and the witnesses present if any under Section 200. The compliance of this procedural requirement has a salutary purpose to achieve especially when the complaint is submitted in absentia. At that stage, apart from the genuineness/authenticity of the allegations made in the complaint even the identity of the complainant is not known to the Magistrate. It is possible that a person may set the law in motion by making a complaint to the Magistrate making false and baseless allegations in fictitious name and in such eventuality, without enquiring into the genuineness of the complaint and without ascertaining the identity of the complainant, if a direction for investigation is issued to the police, even if after investigation the complaint turns out to be false, yet the rights and liberties of the victim would be prejudiced. Hence, in order to obviate any such misuse of legal machinery Section 202 of the Code contemplates either an inquiry by the Magistrate himself or a direction to the police for investigation before issuance of process. The proviso to Section 202 therefore is intended to achieve this object. The examination of the complainant in such circumstances is not only desirable, but is also a mandatory requirement under law, failure of which, in my view, will result in abuse of process of Court thereby vitiating the entire proceedings.

18. In the case in hand, learned Magistrate has committed two fundamental errors, which has resulted in procedural illegalities. Firstly, the learned Magistrate having resorted to the procedure in Chapter XV of the Code could not have reverted back to the pre-cognizance stage and referred the case to the jurisdictional police under Section 156(3) of the Code. Secondly, having resorted to Section 202 of the Code could not have directed investigation by the police without examining the complainant and the witnesses, if any, present. Hence, the impugned order and consequent registration of the FIR and investigation

undertaken by the respondent-police being opposed to Section 202 of the Code are liable to be quashed.

Accordingly, petition is allowed. The order dated 13.7.2012 passed by the learned Magistrate directing investigation by the respondent-police and registration of the FIR in Crime No.86/2012 and consequent proceedings arising therefrom are hereby quashed. The case is remitted to the learned Magistrate to proceed with the matter after examining the complainant and the witnesses if any, in terms of the proviso to Section 202 of the Code....."

[6] On the other hand learned counsel for the respondent husband opposes the submission made by the learned counsel for the petitioner wife.

[7] Heard learned counsel for both the parties. Perused the record.

[8] Putting apart, the allegations and counter allegations made against each other, the main issue which falls for consideration before this Court is whether the requisites of Section 200 and 202 of Cr.P.C. have been followed by the Court below at the time of taking the cognizance or not. A fair reading of the order impugned dated 04.12.2023 clearly indicates that the Court below without examining the complainant and the witnesses had taken the cognizance of offence and proceeded with the matter by issuing summons and so on.

This Court finds that there is a procedural irregularity in dealing with the case since, Section 200 & 202 of Cr.P.C. have not been followed by the Court below while passing the impugned order. Thus, the proceedings initiated by the Court below in taking the cognizance of offence by the impugned order dated 04.12.2023 is accordingly set aside. However, the Court below is directed to start proceeding afresh by following Section 200 & 202 of Cr.PC as expeditiously as possible.

With the above observation and direction, the present petition is disposed of. Miscellaneous application(s) pending if any, shall also stand closed.

JUDGE