

GAHC010180542022



2024:GAU-AS:13115

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./995/2022

BISWAJIT PAUL
S/O SRI BHIM PAUL
VILL- JOYPUR- RAZA BAZAR
P.S. JOYPUR,
DIST. CACHAR, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:SMT. LAKSMI PAUL
D/O KANU CHANDRA PAUL
VILL- MOHANPUR ROAD
SRIKONA P.S. SILCHAR
DIST. CACHAR
ASSA

Advocate for the Petitioner : MR. S P CHOUDHURY, MS B DEVI, MR K BISWAKARMA

Advocate for the Respondent : PP, ASSAM, MR. D GUPTA, MR SAURADEEP DEY (r-2), MS N DEKA (r-2)

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

18-07-2024

Heard Mr. S. P. Choudhury, learned counsel for the petitioner and Mr. K. Baishya, learned Additional Public Prosecutor, Assam for the respondent No.1. Also heard Mr. S. Dey, learned counsel for the respondent No.2.

2) The brief facts of the case is that the petitioner, resident of Village - Joypur-Raza Bazar, P.S.- Joypur, District- Cachar on 27.07.2020, married the respondent No.2, who is a resident of Village - Mohanpur Road, Srikona, P.S.- Silchar, District- Cachar.

3) The respondent No.2 on 19.08.2020 lodged an FIR before the Officer-in-Charge of Silchar Police Station alleging that though she lived with the petitioner as husband and wife after their marriage since 27.07.2020 in her matrimonial house, but the petitioner failed to perform his conjugal rights due to his physical inability that was not informed to her or her parents before their said marriage. When the respondent No.2 brought the said fact to the notice of her in-laws, she was physically and mentally tortured.

4) On 09.08.2020, when her elder sister visited the respondent No.2's matrimonial house, she was ill treated by the FIR named accused persons, i.e., the husband of the respondent No.2 as well as her in-laws and compelled the respondent No.2 to leave her matrimonial house with her elder sister on 09.08.2020 itself, keeping all her Stridhana including her ornaments etc.

5) In the said FIR dated 19.08.2020, the respondent No.2 alleged that the FIR named accused persons suppressing the physical inability of the petitioner, gave the marriage of the petitioner with her as her life partner and thereby cheated her.

6) On being suffered from such physical and mental cruelty, having no other alternative, the said respondent No.2 on 19.08.2020 lodged the FIR after she was compelled to leave her matrimonial house on 09.08.2020. The said FIR dated 19.08.2020 of the respondent No. 2 was registered as Joypur P.S. Case No. 68/2020 under Section 498A/420 IPC corresponding

to G.R. No.421/2020.

7) After completion of investigation of the case the concerned Investigating Officer submitted the Charge-sheet in said Joypur P.S. Case No. 68/2020 on 31.10.2020 vide Charge-Sheet No.35/2020 corresponding to PRC No.04/2022.

8) Perused the records of PRC No.04/2022 and the charge sheet No.35/2020 filed in said Joypur P.S. Case No.68/2020 that was called for by order dated 27.09.2022 passed earlier in this proceeding.

9) In the said Chargesheet No.35/2020 filed in said Joypur P.S. Case No.68/2020 that was registered on the basis of FIR lodged by the respondent No.2, as there was insufficient evidence against the other accused persons of the case excepting the petitioner, their names were dropped in it and finding sufficient evidence against the petitioner, i.e., the husband of the respondent No.2, he was implicated under Section 498A IPC.

10) It is to be noted herein that on 05.10.2020 the respondent No.2 filed a petition under Section 12(1)(a) of the Hindu Marriage Act, 1955 read with Section 25 of the said 1955 Act before the Principal Judge, Family Court, Silchar that was registered as F.C.(Civil) Case No.230/2020 against the petitioner praying for declaration of her marriage with the petitioner as null and void and to pass a decree of nullity and permanent alimony.

11) The petitioner filed this criminal petition praying amongst others, to set aside and quash the Chargesheet No.35/2020 dated 31.10.2020 submitted in said Joypur P.S. Case No.68/2020 that was registered on the basis of the FIR lodged by the respondent No.2 on 19.08.2020 stating that the respondent No.2 could not specifically provide sufficient material regarding the allegation of physical and mental torture made upon her as been alleged in her said FIR dated 19.08.2020.

12) It is submitted on behalf of the petitioner that the Investigating Officer of said Joypur P.S. Case No. 68/2020 submitted the Chargesheet in said Joypur P.S. Case on 31.10.2020 without any valid ground. It is submitted on behalf of the petitioner that the respondent No.2 has only made allegation against him with regard to his physical inability in performing the conjugal rights, but without any proof.

13) By placing the affidavit of the respondent No.2 in her said F.C.(Civil) Case No.230/2020 submitted before the Principal Judge, Family Court, Silchar, Mr. Choudhury, learned counsel for the petitioner submitted that though the respondent No.2 alleged that she was mentally and physically tortured, but could not specifically state about such incident and for such reasons, the Chargesheet No.35/2020 dated 31.10.2020 filed by the Investigating Officer of said Joypur P.S. Case No.68/2020 implicating him should be set aside and quashed.

14) In support of his contention before this Court and in favour of the petitioner, Mr. Choudhury, learned counsel placed reliance on the judgment of the Hon'ble Apex Court in the case of *Achin Gupta Vs. State of Haryana and another* decided on 03.05.2024 in Criminal Appeal No. 2379/2024 arising out of SLP (Crl) No. 4912/2022.

15) Mr. Choudhury placed paragraph 25 of the said judgment passed in said Achin Gupta (*supra*), which reads as follows: --

"25. If a person is made to face a criminal trial on some general and sweeping allegations without bringing on record any specific instances of criminal conduct, it is nothing but abuse of the process of the court. The court owes a duty to subject the allegations levelled in the complaint to a thorough scrutiny to find out, prima facie, whether there is any grain of truth in the allegations or whether they are made only with the sole object of involving certain individuals in a criminal charge, more particularly when a prosecution arises from a matrimonial dispute."

16) Mr. Dey, learned counsel for the respondent No.2 on the other hand from said judgment passed in said Achin Gupta (*supra*), placed paragraph 19, which reads as follows: --

"19. It is also pertinent to note that the Respondent No. 2 lodged the FIR on 09.04.2021, i.e., nearly 2 years after the filing of the divorce petition by the Appellant and 6 months after the filing of the domestic violence case by her mother-in-law. Thus, the First Informant remained silent for nearly 2 years after the divorce petition was filed. With such an unexplained delay in filing the FIR, we find that the same was filed only to harass the Appellant and his family members."

17) Mr. Dey also submitted that the petitioner has his family members and while setting-up the marriage with the respondent No.2, the petitioner suppressed the fact about his physical inability in performing his conjugal rights and thereby cheated the respondent No.2 by marrying her.

18) It is also submitted on behalf of the respondent No.2 that when she disclosed about

the physical inability of the petitioner to her in-laws, she was physically and mentally tortured by the petitioner as well as by other members of her in-laws.

19) In the case in hand, marriage was solemnized between the petitioner and the respondent No.2 on 27.07.2020 and after her marriage, the respondent No. 2 resided with her husband i.e., the petitioner in her matrimonial home at Village - Joypur-Raza Bazar, P.S.- Joypur, District- Cachar.

20) It is seen that the respondent No.2, wife of the petitioner as per the FIR was compelled to leave her matrimonial home with her elder sister on 09.08.2020 when the former visited the matrimonial house of the respondent No.2 and the FIR of the case in hand was lodged on 19.08.2020.

21) The case relied upon by Mr. Choudhury, learned counsel for the petitioner in Achin Gupta (*supra*), is a case, where the marriage was solemnized on 09.10.2008 and a son was born to the parties involved in that case in March, 2012. In 2014 the informant for the first time came to know that her husband Achin Gupta was having an illicit relationship with another lady and the wife of said Achin Gupta, as informant lodged the FIR on 09.04.2021.

22) After considering the entire aspect of the matter, the Hon'ble Apex Court in the case of Achin Gupta (*supra*) observed that – *if a person is made to face a criminal trial on some general and sweeping allegations without bringing on record any specific instances of criminal conduct, the said would be nothing but an abuse of the process of the court.*

23) In that backdrop of the case, Achin Gupta (*supra*), the Hon'ble Apex Court observed that *the Court owes a duty to subject the allegations levelled in the complaint to a thorough scrutiny to find out, prima facie, whether there is any grain of truth in the allegations or whether they are made only with the sole object of involving certain individuals in a criminal charge, more particularly when a prosecution arises from a matrimonial dispute.*

24) This Court found that the Judgment of said *Achin Gupta* (*supra*) placed on behalf of the petitioner is not applicable to the present case.

25) As been noted above, in the case in hand, the marriage was solemnized on 27.07.2020. The victim/informant was compelled to leave her matrimonial home on

09.08.2020 and the victim respondent No.2 lodged the FIR on 19.08.2020.

26) It is also seen from the objection/affidavit submitted by the respondent No.2 in this proceeding pertaining to her allegation against the petitioner and his family members made in the FIR as well as statements made in her petition filed before the Family Court in F.C.(Civil) Case No.230/2020 it is found that those are same and that the petitioner did not deny the allegations leveled against him and his other family members in said F.C.(Civil) Case No.230/2020 presently pending before the Principal Judge, Family Court, Cachar, Silchar.

27) It is also not denied by the petitioner that she was not physically and mentally tortured and cheated while marrying her by suppressing the fact about his physical inability and his family members also did not disclose the said fact to the respondent No.2 and her family members before her marriage with the petitioner.

28) It is not the case of the petitioner that the respondent No.2, his wife lodged the FIR on 19.08.2020 after their marriage on 27.07.2020 to wreak a personal vendetta or undue harassment on him. It is settled by the Hon'ble Apex Court that cruelty or harassment on the wife by her husband or by his family members need not be physical and even mental torture in a given case would be a case of cruelty and harassment within the meaning of Section 498A IPC. It can be seen that the explanation to Section 498A IPC itself refers to both mental and physical cruelty.

29) The Hon'ble Apex Court in the case of *Pawan Kumar Vs. State of Haryana* reported in (1998) 3 SCC 309 categorically observed that —*a girl dreams of great days ahead with hope and aspiration when entering into a marriage, and if from a very next day the husband starts taunting her for not bringing dowry and calling her ugly, there cannot be any greater mental torture, harassment or cruelty for any bride.* The said case of Pawan Kumar (*supra*) relates to mental cruelty.

30) The Hon'ble Apex Court in the cases of *M. Gananath Patnaik Vs. State of Orissa* reported in (2020) 2 SCC 619 and *Giridhar Shankar Tawade Vs. State of Maharashtra* reported in (2020) 5 SCC 177 categorically observed that —*the concept of cruelty and its effect varies from individual to individual also depending upon the social and economical status which such person belongs. 'Cruelty' for the purpose of constituting offence under Section 498A*

need not be physical. Even a mental torture or abnormal behavior may amount to cruelty and harassment in a given case.

31) The Hon'ble Apex Court in the case of *Arvind Singh Vs. State of Bihar* reported in (2001) 6 SCC 407 observed that—*the definition of 'cruelty' in explanation to Section 498A IPC is not vague and to establish cruelty the prosecution has to establish, firstly the willful conduct of the offender and secondly that the nature of such conduct was likely to drive an woman to commit suicide or to cause grave injury or danger to life or limb, whether mental or physical.*

32) It is settled that it is the prosecution who is required to prove that the victim was subjected to cruelty and harassment which fall under exception to Section 498A IPC.

33) In the case in hand since the police after investigating the matter has already submitted the chargesheet against the petitioner implicating him for committing offence against the respondent No. 2 under Section 498A IPC, it will be the duty of the prosecution to prove such acquisition against the petitioner only by adducing evidence of its witnesses that are to be recorded by the concerned Trial Court.

34) Considering the entire aspect of the matter, this Court is of the view that it is not a fit case to exercise its power under Section 482 Cr.P.C. to set aside and quash the Chargesheet No. 35/2020 dated 31.10.2020 filed by the Investigating Officer in said Joypur P.S. Case No. 68/2020 corresponding to PRC No. 04/2022.

35) Accordingly, this criminal petition stands dismissed.

JUDGE

Comparing Assistant