

IN THE CIRCUIT BENCH OF CALCUTTA HIGH COURT AT JALPAIGURI
CRIMINAL REVISIONAL JURISDICTON

Present:- The Hon'ble Justice Manojit Mandal

C.R.R. No. 36 of 2019

Shubhra Deb @ Subhra Deb

V

The State of West Bengal & another.

For the petitioner	: Mr. Ajay Singhal, Adv.
For the State	: Mr. Aditi Shankar Chakraborty, Adv. Mr. Nilay chakraborty, Adv.
For the Opposite party No. 2	: Mr. Bijay Bikram Das, Adv. Ms. Anumita Lahiri, Adv.
Heard on	: 26.08.2019
Judgment on	: 29.08.2019

Manojit Mandal, J.:- The instant case arises out of an application under Section 482 of the Criminal Procedure Code, 1973.

2. By filing such application, petitioner sought for quashing of the charge-sheet and/or the entire proceedings being charge-sheet No. 86/2019 dated 16.02.2019 under Sections 498A/323 of the Indian Penal Code, 1860 in connection with Siliguri Police Station Case No. 36 of 2019 (corresponding to G.R. No.

151/2019) dated 17.01.2019 under Sections 498A/323 of the Indian Penal Code, 1860, now pending before the Additional Chief Judicial Magistrate, Siliguri.

3. Grievances of the petitioner may briefly be stated as follows:-

On the basis of the written complaint lodged by one Smt. Ankita Deb, Alipurduar Police Station Case No. 36 of 2019 dated 17.01.2019 under Sections 498A/325 of the Indian Penal Code was started. It was alleged in the said written complaint that said Ankita Deb was married to Kaushik Deb on 08.06.2010 according to Hindu Rites and Customs. Out of the wedlock a female child was born to them on 30.09.2013. Since then Ankita Deb was subjected to torture both physically and mentally by the petitioner and her sister in law but she has borne it all to save her marriage. After the death of her husband the quantum of torture was increased and she started to live in her parental house. On 17.01.2019 at about 12.30 hours her sister in law went to her parental house at Milanpally, used filthy languages to her and tried to take away her daughter, Sampurna Deb. Her mother went to save her daughter and her sister in law Anindita assaulted her with iron rod causing grievous injury on her person. She was taken to Siliguri District Hospital and was treated at there.

4. The petitioner has, thus, been falsely implicated and this was done to wreak vengeance upon them and to spite them in the eye of the society. After completion of investigation, the Investigating Authority submitted charge-sheet

being charge-sheet No. 86/19 dated 16.02.2019 under Sections 498A/323 of the Indian Penal Code before the learned Court of Additional Chief Judicial Magistrate, Siliguri against the present petitioner and another. Learned Magistrate took cognizance of the said alleged offence. The allegations made in the complaint, even if taken in its entirety do not reflect the essential ingredients of the offences as alleged. Continuation of such proceeding will, thus, amount to abuse of the process of the Court and, as such, the present application was filed with the prayer for quashing of the charge-sheet and/or the entire proceeding under reference.

5. Learned advocate appearing for the petitioner submitted that there is no material available before the learned Court of Magistrate so as to justify further proceedings of this case. He further urged that the petitioner is innocent and in no way connected with any offence for less the offences alleged in the complaint filed by the Opposite party No. 2. He further urged that in the year 2017 i.e. prior to the present proceeding another complaint was filed under Section 498/506 of the Indian Penal Code against the petitioner and another being Siliguri woman P.S Case No. 115 of 2017 dated 19.05.2017. Suppressing the said facts of the case, the Opposite party No. 2 has filed the present case only to harass the petitioner and another. The Opposite party No. 2 suppressed the actual scenario. The allegations against the petitioner shows the ill motive of

Opposite party No. 2. According to learned advocate for the petitioner, the present proceeding is liable to be quashed. In support of his contention he has relied upon the decisions reported in *(2007) 12 SCC 1 (Inder Mohan Goswami and another V. State of Uttaranchal and others)*, 2013 0 AIR (SC) 3794 *(Amitbhai Anilchandra Shah V. the Central Bureau of Investigation and another)* and *(2010) 7 SCC 667 (Preeti Gupta and another V. State of Jharkhand and another)*.

6. In the judgment reported in *(2007) 12 SCC 1* it was held by the Hon'ble Apex Court as follows:-

“Non-bailable warrant should be issued to bring a person to court when summons of bailable warrants would be unlikely to have the desired result. This could be when: it is reasonable to believe that the person will not voluntarily appear in court; or the police authorities are unable to find the person to serve him with a summon; or it is considered that the person could harm someone if not placed into custody immediately.

As far as possible, if the court is of the opinion that a summon will suffice in getting the appearance of the accused in the court, the summon or the bailable warrants should be preferred. The warrants either bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. The court must very

carefully examine whether the Criminal Complaint or FIR has not been filed with an oblique motive.

In complaint cases, at the first instance, the court should direct serving of the summons along with the copy of the complaint. If the accused seem to be avoiding the summons, the court, in the second instance should issueailable warrant. In the third instance, when the court is fully satisfied that the accused is avoiding the court's proceeding intentionally, the process of issuance of the non-ailable warrant should be resorted to. Personal liberty is paramount, therefore, we caution courts at the first and second instance to refrain from issuing non-ailable warrants.

The power being discretionary must be exercised judiciously with extreme care and caution. The court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straight-jacket formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-ailable warrants should be avoided.

The Court should try to maintain proper balance between individual liberty and the interest of the public and the State while issuing non-ailable warrant.

On consideration of the totality of facts and circumstances of this case, the impugned judgment and order of the High Court cannot be sustained.

Needless to mention that the concerned civil court (where the suit is pending) shall decide the suit without being influenced by any observation made by us in this judgment regarding the merits of the civil suit.

Reverting to the facts of this case, we are of the considered view that the impugned judgment of the High Court in declining to exercise its inherent power has led to grave miscarriage of justice. Consequently, we set aside the impugned judgment and in order to prevent abuse of the process of the court and to otherwise secure the ends of the justice we direct that all the proceedings emanating from the FIR shall stand quashed. The appeal is disposed of accordingly. In the facts and circumstances of this case, we direct the parties to bear their own costs."

7. The next judgment relied upon by the learned counsel for the petitioner is reported in **(2010) 7 SCC 667**. In the said judgment, it was held by the Hon'ble Apex Court as follows:-

"It is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. All the courts in our country including this court are flooded with 17 matrimonial cases. This clearly

demonstrates discontent and unrest in the family life of a large number of people of the society.

It is a matter of common experience that most of these complaints under section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.

The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fiber of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fiber, peace and tranquility of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases."

8. In the judgment reported in **2013 0 (AIR) SC 3794**, it was held by the Hon'ble Apex Court as follows:-

“In the light of the specific stand taken by the CBI before this Court in the earlier proceedings by way of assertion in the form of counter affidavit, status report, etc. we are of the view that filing of the second FIR and fresh charge sheet is violative of fundamental rights under Article 14, 20 and 21 of the constitution since the same relate to alleged offence in respect of which an FIR had already been filed and the court has taken cognizance. This Court categorically accepted the CBI's plea that killing of Tulsiram Prajapati is a part of the same series of cognizable offence forming part of the first FIR and in spite of the fact that this Court directed the CBI to “take over” the investigation and did not grant the relief as prayed, namely, registration of fresh FIR, the present action of CBI filing fresh FIR is contrary to various judicial pronouncements which is demonstrated in the earlier part of our judgment.

In view of the above discussion and conclusion, the second FIR dated 29.04.2011 being RC No. 3(S)/2011/Mumbai filed by the CBI is contrary to the directions issued in judgment and order dated 08.04.2011 by this Court in Writ Petition (Criminal) No. 115 of 2009 and accordingly the same is quashed. As a consequence, the charge sheet filed on 04.09.2012, in pursuance of the second FIR, be treated as a supplementary charge sheet in the first FIR.

It is made clear that we have not gone into the merits of the claim of both the parties and it is for the trial Court to decide the same in accordance with law. Consequently, Writ Petition (Criminal) No. 149 of 2012 is allowed. Since the said relief is applicable to all the persons arrayed as accused in the second FIR, no further direction is required in Writ Petition (Criminal) No. 5 of 2013."

9. Learned advocate appearing for the petitioner also relies upon a judgment of Hon'ble Apex Court passed in ***Criminal Appeal No. 1126 of 2011 (Dharmatma Singh V. Harinder Singh and others)***. In the said judgment, it was held as follows:-

"Section 482 of the Cr.P.C. saves the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice. It has been held by this Court in R. P. Kapur v. State of Punjab [AIR 1960 SC 866] that Section 561-A of the Criminal Procedure Code, 1898 (which corresponds to Section 482 of the Criminal Procedure Code, 1973) saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice."

10. Learned counsel for the State submitted that investigation revealed materials implicating the petitioner with the alleged crime.

11. Learned advocate appearing for the Opposite party No. 2 submitted that there are materials available before the learned Court of Magistrate so as to justify further proceeding of this case.

12. I have heard the learned advocates of the respective parties. I have perused the materials on record including the copy of charge-sheet. On a perusal of the charge-sheet, it appears that on examination of material witness and collection of important papers, the charge-sheet was submitted and sufficient materials have been collected by the Investigating Agency to prosecute the petitioner before the Trial Court and a *prima facie* case is made out against the petitioner. Since a *prima facie* case is made out against the petitioner, which is sufficient for the purpose of proceeding further. I am of the view that it will not be proper for this Court to quash the proceedings at this stage. The facts and circumstances of the above noted rulings and the facts and circumstances of present case are not same. In my considered view these judgments do not have any manner of application in the present case.

13. It shall be open to the petitioner to ventilate the grievance before the learned lower Court. So, petitioner is at liberty to take appropriate steps before the concerned lower Court in accordance with law.

14. This application is, thus, disposed of accordingly.
15. Let a copy of this judgment be sent down to the learned Court below for favour of information and necessary action.
16. Urgent photostat certified copy of this judgment be given to the parties, if applied for, upon compliance with requisite formalities.

(Manojit Mandal, J.)